Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Income tax rates and allowances

30 Charge and rates of income tax for 1989-90.

(1) Income tax shall be charged for the year 1989-90, and the basic rate of tax shall be 25 per cent.

(2) The higher rate at which income tax is charged for the year 1989-90 in respect of so much of an individual's total income as exceeds the basic rate limit (20,700) shall be 40 per cent.

Modifications etc. (not altering text)
C1 *For earlier years see* Table C, Vol. 1

31 Age allowance.

(1) In section 257 of the Taxes Act 1988—

(a) in subsection (3) (increased allowance for those aged 80 and over) for "80", wherever occurring, there shall be substituted "75", and

(b) in subsection (5) (age allowance withdrawn by two-thirds of amount by which income exceeds a specified limit) for "two-thirds" there shall be substituted "one half".

(2) This section shall have effect for the year 1989-90.

Modifications etc. (not altering text)
C2 *For earlier years see* Table E(1), Vol. 1

32 Operative date for PAYE.

For the year 1989-90, sections 1(5) and 257(10) of the Taxes Act 1988(which specify the date from which indexed changes in the basic rate limit and in allowances are to be brought into account for the purposes of PAYE) shall have effect as if for the reference to 5th May there were substituted a reference to 18th May.

33 Married couples.

(1) Sections 257 to 257F and 265 of the [M1]Taxes Act 1988,as inserted for the year 1990-91 and subsequent years by the Finance Act 1988,shall be amended as follows.

(2) In section 257(1) for "£2,605" there shall be substituted "£2,785".

(3) In section 257(2) for "£3,180" there shall be substituted "£3,400".

(4) In section 257(3)—
(a) for "80" there shall be substituted "75", and
(b) for "£3,310" there shall be substituted "£3,540".

(5) In section 257(5)—
(a) for "£10,600" there shall be substituted "£11,400",and
(b) for "two-thirds" there shall be substituted "one half".

(6) In section 257A(1) for "£1,490" there shall be substituted "£1,590".

(7) In section 257A(2) for "£1,855" there shall be substituted "£1,985".

(8) In section 257A(3)—
(a) for "80" there shall be substituted "75", and
(b) for "£1,895" there shall be substituted "£2,025".

(9) In section 257A(5)—
(a) for "£10,600" there shall be substituted "£11,400",and
(b) for "two-thirds" there shall be substituted "one half".

(10) In sections 257B(2), 257D(8) and 265(3) after paragraph (b) there shall be inserted "or
(c) on account of any payments to which section 593(2) or 639(3) applies,".

(11) In section 257E(1)(b) for "80" there shall be substituted "75".

(12) In section 257E(2)(a) for "£3,180" there shall be substituted "£3,400".

(13) In section 257E(2)(b) for "£3,310" there shall be substituted "£3,540".

Modifications etc. (not altering text)
C3 *See*Income and Corporation Taxes Act 1988 (c. 1,SIF 63:1), **s. 257***for* 1989–1990*and see* Income andCorpartion Taxes Act 1988 (c. 1, SIF 63:1), 257–257F*for*1990–1991

Marginal Citations
M1 1988 c. 39.

Corporation tax rates etc.

34 Charge and rate of corporation tax for financial year 1989.

Corporation tax shall be charged for the financial year 1989 at the rate of 35 per cent.

Modifications etc. (not altering text)
C4 *For earlier years see* Table K, Vol. 1

35 Corporation tax: small companies.

(1) For the financial year 1989—
(a) the small companies' rate shall be 25 per cent., and
(b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

(2) In section 13(3) of that Act (limits of marginal relief), in paragraphs (a) and (b)—
(a) for "£100,000" there shall be substituted "£150,000", and
(b) for "£500,000" there shall be substituted "£750,000".

(3) Subsection (2) above shall have effect for the financial year 1989 and subsequent financial years; and where by virtue of that subsection section 13of the Taxes Act 1988 has effect with different relevant maximum amounts in relation to different parts of a company's accounting period, then for the purposes of that section those parts shall be treated as if they were separate accounting periods and the profits and basic profits of the company for that period shall be apportioned between those parts.

Modifications etc. (not altering text)
C5 *For earlier years see* Table K, Vol. 1
C6 *For earlier years see* Table L, Vol. 1

Receipts basis etc.

36 Schedule E: revised Cases.

(1) The Taxes Act 1988 shall be amended as follows.

(2) In paragraph 1 of section 19(1) the following Cases shall be substituted for Cases I, II and III—

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

(3) The following paragraph shall be inserted after paragraph 4 of section19(1)—

> Where (apart from this paragraph) emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following rules shall apply for the purposes of the Cases set out in paragraph 1 above—
>
> (a) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held;
>
> (b) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held."

(4) Subsection (2) above shall apply where the year of assessment mentioned in the substituted Case I, II or III is 1989-90 or a subsequent year of assessment.

(5) Subsection (3) above shall apply where each of the years mentioned in the new paragraph 4A(a) or (b) (as the case may be) is 1989-90 or a subsequent year of assessment.

37 Schedule E: assessment on receipts basis.

(1) The following sections shall be inserted immediately before section 203of the Taxes Act 1988—

> "**202A Assessment on receipts basis.**
>
> (1) As regards any particular year of assessment—
>
> (a) income tax shall be charged under Cases I and II of Schedule E on the full amount of the emoluments received in the year in respect of the office or employment concerned;

(b) income tax shall be charged under Case III of Schedule E on the full amount of the emoluments received in the United Kingdom in the year in respect of the office or employment concerned.

(2) Subsection (1) above applies—

(a) whether the emoluments are for that year or for some other year of assessment;

(b) whether or not the office or employment concerned is held at the time the emoluments are received or (as the case may be) received in the United Kingdom.

(3) Where subsection (1) above applies in the case of emoluments received, or(as the case may be) received in the United Kingdom, after the death of the person who held the office or employment concerned, the charge shall be a charge on his executors or administrators; and accordingly income tax—

(a) shall be assessed and charged on the executors or administrators, and

(b) shall be a debt due from and payable out of the deceased's estate.

(4) Section 202B shall have effect for the purposes of subsection (1)(a)above.

202B Receipts basis: meaning of receipt.

(1) For the purposes of section 202A(1)(a) emoluments shall be treated as received at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—

(a) the time when payment is made of or on account of the emoluments;

(b) the time when a person becomes entitled to payment of or on account of the emoluments;

(c) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the emoluments are credited in the company's accounts or records, the time when sums on account of the emoluments are so credited;

(d) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is determined before the period ends, the time when the period ends;

(e) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is not known until the amount is determined after the period has ended, the time when the amount isdetermined.

(2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.

(3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.

(4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.

(5) In subsection (1) above "director" means—

(a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body,

(b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and

(c) in relation to a company whose affairs are managed by the members themselves, a member of the company.

(6) In subsection (1) above "director", in relation to a company, also includes any person in accordance with whose directions or instructions the company's directors (as defined in subsection (5) above) are accustomed to act; and forthis purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company's directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(7) Subsections (1) to (6) above shall have effect subject to subsections (8)to (11) below.

(8) In a case where section 141(1)(a), 142(1)(a), 143(1)(a) or 148(4) treats a person as receiving or being paid an emolument or emoluments at a particular time, for the purposes of section 202A(1)(a) the emolument or emoluments shall be treated as received at that time; and in such a case subsections (1) to (6)above shall not apply.

(9) In a case where section 145(1) treats a person as receiving emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the period referred to in section 145(1); and in such a case subsections (1) to (6) above shall not apply.

(10) In a case where section 154(1), 157(1), 158(1), 160(1), 160(2), 162(6) or164(1) treats an amount as emoluments, for the purposes of section 202A(1)(a)the emoluments shall be treated as received in the year referred to in section154(1) or the other provision concerned; and in such a case subsections (1)to (6) above shall not apply.

(11) In a case where—

(a) emoluments take the form of a benefit not consisting of money, and

(b) subsection (8), (9) or (10) above does not apply,

for the purposes of section 202A(1)(a) the emoluments shall be treated as received at the time when the benefit is provided; and in such a case subsections (1) to (6) above shall not apply."

(2) This section shall apply where the year of assessment mentioned in the new section 202A(1) is 1989-90 or a subsequent year of assessment even if the emoluments concerned are for a year of assessment before 1989-90.

(3) This section shall not apply in the case of emoluments of an office or employment held by a person who died before 6th April 1989.

38 Schedule E: unpaid emoluments.

(1) This section applies to emoluments of an office or employment if—

(a) they are emoluments for a year of assessment (a relevant year) before1989-90,
(b) they fall within Case I or II of Schedule E as the Case applies for years before 1989-90,
(c) they have not been paid before 6th April 1989, and
(d) they have been received on or after 6th April 1989 and before 6th April1991;

and section 202B of the Taxes Act 1988 shall apply for the purposes of paragraph (d) above as it applies for the purposes of section 202A(1)(a) of that Act.

(2) The emoluments shall be charged to income tax only by reference to the year of assessment in which they are received.

(3) Any adjustments consequential on this section (such as the amendment of assessments or the repayment or setting-off of tax paid) shall be made.

(4) This section shall not apply to emoluments of an office or employment held by a person who died before 6th April 1989.

(5) This section shall not apply if the only emoluments of the office or employment not paid before 6th April 1989 are emoluments for a period consisting of or falling within the period beginning with 5th March 1989 and ending with 5th April 1989.

(6) This section shall not apply unless—
(a) written notice that it is to apply is given to the inspector before 6thApril 1991,
(b) the notice is given by or on behalf of the person who holds or held the office or employment concerned, and
(c) the notice states the amount of the emoluments falling within subsection(1) above.

(7) Subsection (8) below applies where emoluments of an office or employment have been or fall to be computed by reference to the accounts basis as regards the year 1987-88 or years of assessment including that year.

(8) In deciding for the purposes of subsection (1)(a) above whether emoluments are emoluments for a particular year, the emoluments of the office or employment for the year or (as the case may be) years mentioned in subsection(7) above, and for the year 1988-89, shall be computed by reference to that basis.

(9) In deciding whether subsection (8) above applies in a particular case, any request to revoke the application of the accounts basis shall be ignored if—
(a) it is made after 5th April 1989, or
(b) it is made before 6th April 1989 otherwise than in writing.

(10) In the application of this section to emoluments of an office or employment under or with a person carrying on business as an authorised Lloyd's underwriting agent, the references in subsections (1)(d) and (6)(a)above to 6th April 1991 shall be construed as references to 6th April 1994.

(11) Subsection (10) above shall not apply unless the duties of the office or employment relate wholly or mainly to the underwriting agency business.

(12) The reference in subsection (10) above to an authorised Lloyd's underwriting agent is to a person permitted by the Council of Lloyd's to act as an underwriting agent at Lloyd's.

(13) If in a particular case it appears to the Board reasonable to do so they may direct that subsections (1)(d) and (6)(a) above shall have effect in relation to that case as if for the references to 6th April 1991 or (as the case may be) 6th April 1994 there were substituted references to such later date as they may specify in the direction.

(14) In this section "the accounts basis" means the basis commonly so called (under which emoluments for a year of assessment are computed by reference to the emoluments for a period other than the year of assessment).

39 Schedule E: unremitted emoluments.

(1) This section applies to emoluments of an office or employment if—

(a) they are emoluments for a year of assessment (a relevant year) before1989-90,

(b) they are received in the United Kingdom after 5th April 1989, and

(c) had this Act not been passed they would have fallen within Case III of Schedule E.

(2) The emoluments shall be treated as if they were not emoluments for the relevant year.

(3) But they shall be treated as if they were emoluments for the year of assessment in which they are received in the United Kingdom and as if they fell within Case III as substituted by section 36 above; and accordingly income tax shall be charged, in accordance with section 202A of the Taxes Act1988, by reference to the year of assessment in which the emoluments are received in the United Kingdom.

40 Schedule E: emoluments already paid.

(1) Subsection (2) below applies to emoluments of an office or employment if—

(a) they are emoluments for a year of assessment after 1988-89,

(b) they have been paid before 6th April 1989, and

(c) they fall within Case I or II of Schedule E as substituted by section 36above.

(2) The emoluments shall be treated as if they were received, within the meaning of section 202B of the Taxes Act 1988, on 6th April 1989; and accordingly income tax shall be charged, in accordance with section 202A ofthat Act, by reference to the year 1989-90.

(3) Subsection (4) below applies to emoluments of an office or employment if—

(a) they are emoluments for a year of assessment after 1988-89,

(b) they have been received in the United Kingdom before 6th April 1989, and

(c) they fall within Case III of Schedule E as substituted by section 36above.

(4) The emoluments shall be treated as if they were received in the United Kingdom on 6th April 1989; and accordingly income tax shall be charged, in accordance with section 202A of the Taxes Act 1988, by reference to the year1989-90.

41 Schedule E: pensions etc.

(1) This section applies in relation to the following pensions and other benefits—

(a) a pension, stipend or annuity chargeable to income tax under Schedule E by virtue of paragraph 2, 3 or 4 of section 19(1) of the Taxes Act 1988;

(b) a pension or annual payment chargeable to income tax under Schedule E by virtue of section 133 of that Act (voluntary pensions);

(c) income support chargeable to income tax under Schedule E by virtue of section 151 of that Act;

(d) a pension chargeable to income tax under Schedule E by virtue of section597 of that Act (retirement benefit schemes);

(e) a benefit chargeable to income tax under Schedule E by virtue of section617(1) of that Act (social security benefits).

(2) As regards any particular year of assessment income tax shall be charged on the amount of the pension or other benefit accruing in respect of the year; and this shall apply irrespective of when any amount is actually paid in respect of the pension or other benefit.

(3) This section shall apply where the year of assessment mentioned in subsection (2) above is 1989-90 or a subsequent year of assessment.

Modifications etc. (not altering text)
C7 S. 41 extended (3.5.1994) by 1994 c. 9, **s. 139(3)**

42 Schedule E: supplementary.

(1) The Taxes Act 1988 shall be amended as follows.

(2) In section 131(2) (interaction of Cases) the words "for the same or another chargeable period" shall be omitted.

(3) In section 149(1) (sick pay chargeable as emoluments of employment for a certain period) the words "for that period" and the words "for that or any other period" shall be omitted.

(4) Section 170 (profit-related pay charged for year of assessment in which it is paid) shall cease to have effect.

(5) In paragraph 2(2) of Schedule 12 (foreign earnings) for the words from "emoluments from" to "year of assessment" there shall be substituted the words "emoluments for the year of assessment from the relevant employment in respect of which such a deduction is allowed".

(6) This section shall apply for the year 1989-90 and subsequent years of assessment.

43 Schedule D: computation.

(1) Subsection (2) below applies where—

(a) a calculation is made of profits or gains which are to be charged under Schedule D and are for a period of account ending after 5th April 1989,

(b) relevant emoluments would (apart from that subsection) be deducted in making the calculation, and

(c) the emoluments are not paid before the end of the period of nine months beginning with the end of that period of account.

(2) The emoluments—

(a) shall not be deducted in making the calculation mentioned in subsection(1) (a) above, but

(b) shall be deducted in calculating profits or gains which are to be charged under Schedule D and are for the period of account in which the emoluments are paid.

(3) Subsections (4) and (5) below apply where—

(a) a calculation such as is mentioned in subsection (1)(a) above is made,

(b) the calculation is made before the end of the period of nine months beginning with the end of the period of account concerned,

(c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and

(d) the emoluments have not been paid when the calculation is made.

(4) It shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of that period of nine months.

(5) But the calculation shall be adjusted if—

(a) the emoluments are paid after the calculation is made but before the end of that period of nine months,

(b) a claim to adjust the calculation is made to the inspector, and

(c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.

(6) In the application of this section to the calculation of a person'sprofits or gains as an authorised Lloyd's underwriting agent—

(a) the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to ninemonths shall be construed as references to three years and nine months, and

(b) the reference in subsection (5)(c) above to two years shall be construedas a reference to five years.

(7) The reference in subsection (6) above to an authorised Lloyd'sunderwriting agent is to a person permitted by the Council of Lloyd's to actas an underwriting agent at Lloyd's.

(8) In a case where the period of account mentioned in subsection (1)(a) above begins before 6th April 1989 and ends before 6th April 1990, the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to eighteen months.

(9) In this section "period of account" means a period forwhich an account is made up.

(10) For the purposes of this section "relevant emoluments" are emoluments for a period after 5th April 1989 allocated either—

(a) in respect of particular offices or employments (or both), or

(b) generally in respect of offices or employments (or both).

(11) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—

(a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;

(b) potential emoluments are paid when they become relevant emoluments which are paid.

(12) In deciding for the purposes of this section whether emoluments are paid at any time after 5th April 1989, section 202B of the Taxes Act 1988 (time when emoluments are treated as received) shall apply as it applies for the purposes of section 202A(1)(a) of that Act, but reading "paid" for "received" throughout.

(13) In section 436(1)(b) of the Taxes Act 1988 (profits to be computed in accordance with provisions of that Act applicable to Case I of Schedule D) the reference to that Act shall be deemed to include a reference to this section.

44 Investment and insurance companies: computation.

(1) Subsection (2) below applies where—

(a) a calculation is made for the purposes of corporation tax of the profits of an investment company for an accounting period ending after 5th April 1989,

(b) relevant emoluments would (apart from that subsection) be deducted in making the calculation, and

(c) the emoluments are not paid before the end of the period of nine months beginning with the end of the relevant period of account.

(2) The emoluments—

(a) shall not be deducted in making the calculation mentioned in subsection(1)(a) above, but

(b) shall be deducted in calculating for the purposes of corporation tax the profits of the company concerned for the accounting period in which the emoluments are paid.

(3) Subsections (4) and (5) below apply where—

(a) a calculation such as is mentioned in subsection (1)(a) above is made,

(b) the calculation is made before the end of the period of nine months beginning with the end of the relevant period of account,

(c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and

(d) the emoluments have not been paid when the calculation is made.

(4) It shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of that period of nine months.

(5) But the calculation shall be adjusted if—

(a) the emoluments are paid after the calculation is made but before the end of that period of nine months,

(b) a claim to adjust the calculation is made to the inspector by or on behalf of the company concerned, and

(c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.

(6) In a case where the accounting period mentioned in subsection (1)(a) above begins before 6th April 1989 and ends before 6th April 1990, the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to eighteen months.

(7) In this section "investment company" has the same meaning as in Part IV of the Taxes Act 1988.

(8) For the purposes of this section "relevant emoluments" are emoluments for a period after 5th April 1989 allocated either—

(a) in respect of particular offices or employments (or both), or

(b) generally in respect of offices or employments (or both).

(9) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—

(a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;

(b) potential emoluments are paid when they become relevant emoluments which are paid.

(10) For the purpose of this section the relevant period of account is the period of account which—

(a) includes the accounting period concerned, or

(b) begins when the accounting period concerned begins and ends when the accounting period concerned ends.

(11) In deciding for the purposes of this section whether emoluments are paid at any time after 5th April 1989, section 202B of the Taxes Act 1988 (time when emoluments are treated as received) shall apply as it applies for the purposes of section 202A(1)(a) of that Act, but reading "paid" for "received" throughout.

(12) Where the profits of a company carrying on life assurance business are not charged under Case I of Schedule D, this section shall apply in calculating the profits as it applies in calculating the profits of an investment company; but the effect of section 86 below shall be ignored in construing subsection(1)(b) above.

(13) In a case where, apart from this subsection and by virtue of subsection(2)(b) above as it applies by virtue of subsection (12) above, emoluments fall to be deducted in calculating profits for a particular accounting period—

(a) subsection (2)(b) above shall have effect subject to section 86 below;

(b) in construing section 86 the emoluments shall be treated as expenses for that accounting period.

Modifications etc. (not altering text)

C8 S. 44 modified (23.3.1999 with effect with respect to accounting periods of insurance companies ending on or after 1.7.1999) by S.I. 1999/498, **regs. 1**, 9

45 PAYE: meaning of payment.

(1) The Taxes Act 1988 shall be amended as follows.

(2) The following section shall be inserted after section 203—

"**203A PAYE: meaning of payment.**

(1) For the purposes of section 203 and regulations under it a payment of, or on account of, any income assessable to income tax under Schedule E shall be treated as made at the time found in accordance with the following

rules(taking the earlier or earliest time in a case where more than one rule applies)—

(a) the time when the payment is actually made;

(b) the time when a person becomes entitled to the payment;

(c) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the income are credited in the company's accounts or records, the time when sums on account of the income are so credited;

(d) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is determined before the period ends, the time when the period ends;

(e) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.

(2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.

(3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.

(4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.

(5) Subsections (5) and (6) of section 202B shall apply for the purposes of subsection (1) above as they apply for the purposes of section 202B(1)."

(3) Section 203(4) (regulations may define payment) shall cease to have effect.

(4) Subsection (2) above shall have effect to determine whether anything occurring on or after the day on which this Act is passed constitutes a payment for the purposes mentioned in the new section 203A.

(5) But if an event occurring before the day on which this Act is passed constituted a payment of or on account of income for the purposes mentioned in the new section 203A, nothing occurring on or after that day shall constitute a payment of or on account of the same income for those purposes.

Interest

46 Relief for interest.

For the year 1989-90 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be£30,000.

47 Close company loans: business expansion scheme.

In section 360 of the Taxes Act 1988 (loans to buy interest in close company), after subsection (3) there shall be inserted—

"(3A) Interest shall not be eligible for relief under section 353 by virtue of paragraph (a) of subsection (1) above in respect of shares acquired on or after 14th March 1989 if at any time the person by whom they are acquired, or that person's husband or wife, makes a claim for relief in respect of the munder Chapter III of Part VII."

48 Close company loans: material interest.

(1) In section 360 of the Taxes Act 1988 for subsection (4) there shall be substituted—

"(4) Subject to section 360A, in this section expressions to which a meaning is assigned by Part XI have that meaning."

(2) The following section shall be inserted after that section—

"**360A Meaning of "material interest" in section 360.**

(1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest in a company—

(a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or

(b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

(2) Subject to the following provisions of this section, in subsection (1)above "associate", in relation to an individual, means—

(a) any relative or partner of the individual;

(b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor("settlement" and "settlor" having the same meaning as in section 681(4)); and

(c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.

(3) In relation to any loan made after 5th April 1987, there shall be disregarded for the purposes of subsection (2)(c) above—

(a) the interest of the trustees of an approved profit sharing scheme (within the meaning of section 187) in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and

(b) any rights exercisable by those trustees by virtue of that interest.

(4) In relation to any loan made on or after the day on which the Finance Act1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.

(5) In subsection (4) above "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.

(6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 percent. of the ordinary share capital of the company.

(7) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of subsection (6) above in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.

(8) In relation to any loan made before 14th November 1986, where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, subsection (2)(c) above shall have effect as if for the reference to the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased there were substituted a reference to any person (other than the individual) interested in the settlement or estate, but subject to subsection (9) below.

(9) Subsection (8) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or

(b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

(10) In this section "relative" means husband or wife, parent or remoter forebear, child or remoter issue or brother or sister."

Benefits in kind

49 Car benefits.

(1) In Schedule 6 to the Taxes Act 1988 (taxation of directors and others in respect of cars) for Part I (tables of flat rate cash equivalents) there shall be substituted—

"**PART I**

TABLES OF FLAT RATE CASH EQUIVALENTS

table A

CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND HAVING A CYLINDER CAPACITY

Cylinder capacity of car in cubic centimetres	**Age of car at end of relevant year of assessment**	
	Under 4 years	**4 years or more**
1400 or less	£1,400	£950
More than 1400 but not more than 2000	£1,850	£1,250
More than 2000	£2,950	£1,950

table B

CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND NOT HAVING A CYLINDER CAPACITY

Original market value of car	**Age of car at end of relevant year of assessment**	
	Under 4 years	**4 years or more**
Less than £6,000	£1,400	£950
£6,000 or more but less than £8,500	£1,850	£1,250
£8,500 or more but not more than £19,250	£2,950	£1,950

table B

CARS WITH AN ORIGINAL MARKET VALUE OF MORE THAN £19,250

Original market value of car	**Age of car at end of relevant year of assessment**	
	Under 4 years	**4 years or more**

More than £19,250 but not more than £29,000	£3,850	£2,600
More than £29,000	£6,150	£4,100”

(2) This section shall have effect for the year 1989-90 and subsequent years of assessment.

50 Security assets and services.

(1) For the purposes of this section a security asset is an asset which improves personal security, and a security service is a service which improves personal security.

(2) In a case where—

(a) a security asset or security service is provided for an employee by reason of his employment, or is used by an employee, and

(b) the cost is wholly or partly borne by or on behalf of a person (the provider) other than the employee,

in charging tax under Schedule E on the emoluments from the employment a deduction shall be allowed of an amount equal to so much of the cost so borne as falls to be included in the emoluments of the employment.

(3) In a case where—

(a) a security asset or security service is provided for or used by an employee,

(b) expenses in connection with the provision or use are incurred out of the emoluments of the employment, and

(c) the expenses are reimbursed by or on behalf of a person (the provider)other than the employee,

in charging tax under Schedule E on the emoluments from the employment a deduction shall be allowed of an amount equal to the amount of the expenses.

(4) Subsection (2) or (3) above shall not apply unless the asset or service is provided for or used by the employee to meet a threat which—

(a) is a special threat to his personal physical security, and

(b) arises wholly or mainly by virtue of the particular employment concerned.

(5) Subsection (2) or (3) above shall not apply unless the provider has the meeting of that threat as his sole object in wholly or partly bearing the cost or reimbursing the expenses (as the case may be).

(6) Subsection (2) or (3) above shall not apply in the case of a service unless the benefit resulting to the employee consists wholly or mainly of an improvement of his personal physical security.

(7) Subsection (2) or (3) above shall not apply in the case of an asset unless the provider intends the asset to be used solely to improve personal physical security.

51 Assets used partly for security.

(1) In a case where—

(a) apart from section 50(7) above, section 50(2) above would apply in the case of an asset, and

(b) the provider intends the asset to be used partly to improve personal physical security,

section 50(2) shall nevertheless apply, but only so as to allow a deduction of the appropriate proportion of the amount there mentioned.

(2) For the purposes of subsection (1) above the appropriate proportion of the amount mentioned in section 50(2) above is such proportion of that amount as is attributable to the provider's intention that the asset be used to improve personal physical security.

(3) In a case where—

(a) apart from section 50(7) above, section 50(3) above would apply in the case of an asset, and

(b) the provider intends the asset to be used partly to improve personal physical security,

section 50(3) shall nevertheless apply, but only so as to allow a deduction of the appropriate proportion of the amount there mentioned.

(4) For the purposes of subsection (3) above the appropriate proportion of the amount mentioned in section 50(3) above is such proportion of that amount as is attributable to the provider's intention that the asset be used to improve personal physical security.

52 Security: supplementary.

(1) If the provider intends the asset to be used solely to improve personal physical security, but there is another use for the asset which is incidental to improving personal physical security, that other use shall be ignored in construing section 50(7) above.

(2) The fact that an asset or service improves the personal physical security of any member of the employee's family or household, as well as that of the employee, shall not prevent section 50(2) or (3) above from applying.

(3) In sections 50 and 51 above and this section—

(a) references to an asset do not include references to a car, a ship or an aircraft,

(b) references to an asset or service do not include references to a dwelling, grounds appurtenant to a dwelling, or living accommodation,

(c) references to an asset include references to equipment and a structure(such as a wall),

(d) references to an employee are to a person who holds an employment, and

(e) references to an employment include references to an office.

(4) For the purposes of sections 50 and 51 above and this section in their application to an asset, it is immaterial whether or not the asset becomes affixed to land (whether constituting a dwelling or otherwise).

(5) For the purposes of sections 50 and 51 above and this section in their application to an asset, it is immaterial whether or not the employee is or becomes entitled to the property in the asset or (in the case of a fixture)an estate or interest in the land concerned.

(6) Sections 50 and 51 above and this section apply where expenditure is incurred on or after 6th April 1989 in or towards bearing a cost or in reimbursing expenses (as the case may be).

53 Employees earning £8,500 or more and directors.

(1) For section 167 of the Taxes Act 1988 (which defines "director's or higher-paid employment" for the purposes of Chapter II of Part V)there shall be substituted—

"**167 Employment to which this Chapter applies.**

(1) This Chapter applies—

(a) to employment as a director of a company (but subject to subsection (5)below), and

(b) to employment with emoluments at the rate of £8,500 a year or more.

(2) For this purpose emoluments are to be calculated—

(a) on the basis that they include all such amounts as come, or would but for section 157(3) come, into charge under this Chapter or section 141, 142, 143or 145, and

(b) without any deduction under section 198, 201 or 332(3).

(3) Where a person is employed in two or more employments by the same employer and either—

(a) the total of the emoluments of those employments (applying this section)is at the rate of £8,500 a year or more, or

(b) this Chapter applies (apart from this subsection) to one or more of those employments,

this Chapter shall apply to all the employments.

(4) All employees of a partnership or body over which an individual or another partnership or body has control are to be treated for the purposes of this section (but not for any other purpose) as if the employment were an employment by the individual or by that other partnership or body as the case may be.

(5) This Chapter shall not apply to a person's employment by reason only of its being employment as a director of a company (without prejudice to its application by virtue of subsection (1)(b) or (3) above) if he has no material interest in the company and either—

(a) his employment is as a full-time working director; or

(b) the company is non-profit making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only."

(2) In consequence of subsection (1) above—

(a) for the heading to Chapter II of Part V of the Taxes Act 1988 there shall be substituted "EMPLOYEES EARNING £8,500 OR MORE AND DIRECTORS";

(b) the words " employment to which this Chapter applies " shall be substituted for the words "director's or higher-paid employment" in sections 153(1), 154(1), 157(1), 158(1), 160(1) and (2), 162(1), 163(1) and165(6)(b) of that Act;

(c) for section 160(3) of that Act there shall be substituted—

"(3) Where—

(a) there was outstanding, at any time when a person was in employment to which this Chapter applies, the whole or part of a loan to him (or a relative of his) the benefit of which was obtained by reason of his employment, and

(b) that employment has terminated or ceased to be employment to which this Chapter applies,

subsection (2) above applies as if the employment had not terminated or, as the case may be, had not ceased to be employment to which this Chapter applies.";

(d) in section 162(5) of that Act, after the words "section 160(2)" there shall be inserted the words "(and where appropriate section 160(3))";

(e) for section 162(7) of that Act there shall be substituted—

"(7) If at the time of the event giving rise to a charge by virtue of subsection (6) above the employment in question has terminated, that subsection shall apply as if it had not."

(f) the words " employment to which Chapter II of Part V applies "shall be substituted for the words from "director's" to "section167)" in sections 332(2)(c) and 418(3)(a) of that Act;

(g) the words " employment to which Chapter II of Part V of the principal Act applies " shall be substituted for the words "director's or higher paid employment" in section 15(3)(a) of the [M2]TaxesManagement Act 1970.

Marginal Citations

M2 1970 c. 9.

Medical insurance

54 Relief.

(1) This section applies where—

(a) on or after 6th April 1990 an individual makes a payment in respect of a premium under a contract of private medical insurance (whenever issued),

(b) the contract meets the requirement in subsection (2) below as to the person or persons insured,

(c) at the time the payment is made the contract is an eligible contract,

(d) the individual making the payment does not make it out of resources provided by another person for the purpose of enabling it to be made, and

(e) the individual making the payment is not entitled to claim any relief or deduction in respect of it under any other provision of the Tax Acts.

(2) The requirement mentioned in subsection (1)(b) above is that the contracti nsures—

(a) an individual who at the time the payment is made is aged 60 or over and resident in the United Kingdom,

(b) individuals each of whom at that time is aged 60 or over and resident in the United Kingdom, or

(c) two individuals who are married to each other at that time, at least one of whom is aged 60 or over at that time, and each of whom is resident in the United Kingdom at that time.

(3) If the payment is made by an individual who at the time it is made is resident in the United Kingdom (whether or not he is the individual or one ofthe individuals insured by the contract) it shall be deducted from or set offagainst his income for the year of assessment in which it is made; but reliefunder this subsection shall be given only on a claim made for the purpose,except where subsections (4) to (6) below apply.

(4) In such cases and subject to such conditions as the Board may specify in regulations, relief under subsection (3) above shall be given in accordance with subsections (5) and (6) below.

(5) An individual who is entitled to such relief in respect of a payment may deduct and retain out of it an amount equal to income tax on it at the basic rate for the year of assessment in which it is made.

(6) The person to whom the payment is made—

(a) shall accept the amount paid after deduction in discharge of the individual's liability to the same extent as if the deduction had not been made, and

(b) may, on making a claim, recover from the Board an amount equal to the amount deducted.

(7) The Treasury may make regulations providing that in circumstances prescribed in the regulations—

(a) an individual who has made a payment in respect of a premium under a contract of private medical insurance shall cease to be and be treated as not having been entitled to relief under subsection (3) above; and

(b) he or the person to whom the payment was made (depending on the terms of the regulations) shall account to the Board for tax from which relief has been given on the basis that the individual was so entitled.

(8) Regulations under subsection (7) above may include provision adapting or modifying the effect of any enactment relating to income tax in order to secure the performance of any obligation imposed under paragraph (b) of that subsection.

(9) In this section—

(a) references to a premium, in relation to a contract of insurance, are to any amount payable under the contract to the insurer, and

(b) references to an individual who is resident in the United Kingdom at anytime include references to an individual who is at that time performing duties which are treated by virtue of section 132(4)(a) of the Taxes Act 1988 as performed in the United Kingdom.

Modifications etc. (not altering text)

C9 *For regulations see*S.I. 1989/2387*and*S.I. 1989/2389 (*in* Part III Vol. 5*under "Private medicalinsurance"*)

55 Eligible contracts.

(1) This section has effect to determine whether a contract is at a particular time (the relevant time) an eligible contract for the purposes of section 54above.

(2) A contract is an eligible contract at the relevant time if—

(a) it was entered into by an insurer who at the time it was entered into was a qualifying insurer and was approved by the Board for the purposes of this section,

(b) the period of insurance under the contract does not exceed one year(commencing with the date it was entered into),

(c) the contract is not connected with any other contract at the relevant time and has not been connected with any other contract at any time since it was entered into,

(d) no benefit has been provided by virtue of the contract other than an approved benefit, and

(e) the contract meets one or more of the three conditions set out below.

(3) The first condition is that the contract is certified by the Board under section 56 below at the relevant time.

(4) The second condition is that, at the time the contract was entered into, it conformed with a standard form certified by the Board as a standard form of eligible contract.

(5) The third condition is that, at the time the contract was entered into, it conformed with a form varying from a standard form so certified in no other respect than by making additions—

(a) which were (at the time the contract was entered into) certified by the Board as compatible with an eligible contract when made to that standard form, and

(b) which (at that time) satisfied any conditions subject to which the additions were so certified.

(6) Where a contract is varied, and the relevant time falls after the time the variation takes effect, subsections (1) to (5) above shall have effect as if "entered into" read "varied" in each place where it occurs in subsections (4) and (5) above.

(7) For the purposes of this section a contract is connected with another contract at any time if—

(a) they are simultaneously in force at that time,

(b) either of them was entered into with reference to the other, or with aview to enabling the other to be entered into on particular terms, or with a view to facilitating the other being entered into on particular terms, and

(c) the terms on which either of them was entered into would have been significantly less favourable to the insured if the other had not been entered into.

(8) For the purposes of this section each of the following is a qualifying insurer—

(a) an insurer lawfully carrying on in the United Kingdom business of any of the classes specified in Part I of Schedule 2 to the [M3]Insurance Companies Act 1982;

(b) an insurer not carrying on business in the United Kingdom but carrying on business in another member State and being either a national of a member State or a company or partnership formed under the law of any part of the

United Kingdom or another member State and having its registered office, central administration or principal place of business in a member State.

(9) For the purposes of this section a benefit is an approved benefit if it is provided in pursuance of a right of a description mentioned in section56(3)(a) below.

Marginal Citations
M3 1982 c.50.

56 Certification of contracts.

(1) The Board shall certify a contract under this section if it satisfies the conditions set out in subsection (3) below; and the certification shall be expressed to take effect from the time the conditions are satisfied, and shal ltake effect accordingly.

(2) The Board shall revoke a certification of a contract under this section if it comes to their notice that the contract has ceased to satisfy the conditions set out in subsection (3) below; and the revocation shall be expressed to take effect from the time the conditions ceased to be satisfied, and shall take effect accordingly.

(3) The conditions referred to above are that—

(a) the contract either provides indemnity in respect of all or any of the costs of all or any of the treatments, medical services and other matters for the time being specified in regulations made by the Treasury, or in addition to providing indemnity of that description provides cash benefits falling within rules for the time being so specified,

(b) the contract does not confer any right other than such a right as is mentioned in paragraph (a) above or is for the time being specified in regulations made by the Treasury,

(c) the premium under the contract is in the Board's opinion reasonable, and

(d) the contract satisfies such other requirements as are for the time being specified in regulations made by the Treasury.

(4) The certification of a contract by the Board under this section shall cease to have effect if the contract is varied; but this is without prejudice to the application of the preceding provisions of this section to the contract as varied.

(5) Where the Board refuse to certify a contract under this section, or they revoke a certification, an appeal may be made to the Special Commissioners by—

(a) the insurer, or

(b) any person who (if the policy were certified) would be entitled to relief under section 54 above.

(6) Where a contract is certified under this section, or a certification is revoked or otherwise ceases to have effect, any adjustments resulting from the certification or from its revocation or ceasing to have effect shall be made.

(7) Subsection (6) above applies where a certification or revocation takes place on appeal as it applies in the case of any other certification or revocation.

(8) In this section the reference to a premium, in relation to a contract of insurance, is to any amount payable under the contract to the insurer.

Modifications etc. (not altering text)

C10 *For regulations see*S.I. 1989/2389 (*in*Part III Vol. 5*under "Private medical insurance"*)

57 Medical insurance: supplementary.

(1) The Board may by regulations—

(a) provide that a claim under section 54(3) or (6)(b) above shall be made insuch form and manner, shall be made at such time, and shall be accompanied bysuch documents, as may be prescribed;

(b) make provision, in relation to payments in respect of which a person isentitled to relief under section 54 above, for the giving by insurers in suchcircumstances as may be prescribed of certificates of payment in such form asmay be prescribed to such persons as may be prescribed;

(c) provide that a person who provides (or has at any time provided) insuranceunder contracts of private medical insurance shall comply with any noticewhich is served on him by the Board and which requires him within a prescribedperiod to make available for the Board's inspection documents (of a prescribedkind) relating to such contracts;

(d) provide that persons of such a description as may be prescribed shall, within a prescribed period of being required to do so by the Board, furnishto the Board information (of a prescribed kind) about contracts of privatemedical insurance;

(e) make provision with respect to the approval of insurers for the purposesof section 55 above and the withdrawal of approval for the purposes of thatsection;

(f) make provision for and with respect to appeals against decisions of the Board with respect to the giving or withdrawal of approval of insurers for thepurposes of section 55 above;

(g) make provision with respect to the certification by the Board of standardforms of eligible contract and variations from standard forms of eligiblecontract certified by them;

(h) make provision for and with respect to appeals against decisions of theBoard with respect to the certification of standard forms of eligible contractor variations from standard forms of eligible contract certified by them;

(i) provide that certification, or the revocation of a certification, undersection 56 above shall be carried out in such form and manner as may be prescribed;

(j) make provision with respect to appeals against decisions of the Board withrespect to certification or the revocation of certification under section 56above;

(k) make provision generally as to administration in connection with sections54 to 56 above.

(2) The words " Regulations under section 57 of the Finance Act1989 " shall be added at the end of each column in the Table in section98 of the [M4]Taxes Management Act 1970 (penalties for failureto furnish information etc.).

(3) The following provisions of the Taxes Management Act 1970, namely—

(a) section 29(3)(c) (excessive relief),

(b) section 30 (tax repaid in error etc.),

(c) section 88 (interest), and

(d) section 95 (incorrect return or accounts),

shall apply in relation to the payment of an amount claimed under section54(6)(b) above to which the claimant was not entitled as if it had been incometax repaid as a relief which was not due.

(4) In sections 257B(2), 257D(8) and 265(3) of the Taxes Act 1988 afterparagraph (c) there shall be inserted "or

(d) on account of any payments to which section 54(5) of the Finance Act 1989applies".

(5) In subsection (1) above—

"eligible contract" has the meaning given by section 55above, and

"prescribed" means prescribed by or, in relation to form,under the regulations.

Modifications etc. (not altering text)
C11 *See*S.I. 1989/2387 (*in* Part III Vol.5*under "Private medical insurance"*)

Marginal Citations
M4 1970 c. 9.

Charities

58 Payroll deduction scheme.

(1) In section 202(7) of the Taxes Act 1988 (which limits to £240 the deductions attracting relief) for "£240" there shall be substituted "£480".

(2) This section shall have effect for the year 1989-90 and subsequent years of assessment.

59 Covenanted subscriptions.

(1) In determining whether a payment made to a charity within subsection (2)below is —

(a) an annual payment for the purposes of the Tax Acts, or

(b) a payment to which section 125(1) of the Taxes Act 1988 applies, or

(c) a covenanted payment to charity within the meaning given by section 660(3)of that Act,

there shall be disregarded any consideration for the payment which is ofa kind described in subsection (3) below.

(2) A charity is within this subsection if its sole or main purpose is—

(a) the preservation of property for the public benefit, or

(b) the conservation of wildlife for the public benefit.

(3) The consideration referred to in subsection (1) above is the right ofadmission—

(a) to view property the preservation of which is the sole or main purpose ofthe charity, or

(b) to observe wildlife the conservation of which is the sole or main purposeof the charity.

(4) In subsection (3) above "right of admission" refers to admission ofthe person making the payment (or of any member of his family who may beadmitted because of the payment) either free of the charges normally payablefor admission by members of the public, or on payment of a reduced charge.

(5) Subsection (1) above shall not apply unless the opportunity to makepayments of the kind in question is available to members of the public.

(6) For the purposes of this section—

(a) "charity" means a body of persons or trust established forcharitable purposes only, and

(b) the bodies mentioned in section 507 shall each be treated as having beenso established.

(7) This section shall apply to payments due on or after 14th March 1989.

60 British Museum and Natural History Museum.

(1) In subsection (1) of section 507 of the Taxes Act 1988 (which gives tax exemption to the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission) after paragraph (b) there shall be inserted—

"(c) the Trustees of the British Museum;

(d) the Trustees of the British Museum (Natural History);"and subsection (2) of that section (which gives partial tax exemption to those Trustees) shall cease to have effect.

(2) In section 339(9) of that Act, for the words from "the Trustees"(where those words first occur) to "History) and" there shall be substituted the words "each of the bodies mentioned in section 507, and in subsections (1) to (5) above includes".

(3) In section 660(4) of that Act, for the words from "the Trustees" to "England" there shall be substituted the words "the bodies mentionedin section 507".

(4) Subsection (1) above shall apply in relation to accounting periods ending on or after 14th March 1989, and subsections (2) and (3) above shall apply to payments due on or after that day.

Profit-related pay, share schemes etc.

61 Profit-related pay.

Schedule 4 to this Act (which amends the provisions of the Taxes Act 1988 relating to profit-related pay) shall have effect.

62 Savings-related share option schemes.

(1) Part III of Schedule 9 to the Taxes Act 1988 (requirements applicable to savings-related share option schemes) shall be amended as follows.

(2) In paragraph 24(2)(a) (scheme not to permit monthly amount of contributions linked to schemes to exceed £100), for "£100"there shall be substituted "£150".

(3) In paragraph 25(b) (requirement that price at which share may be acquired under scheme be not less than 90 per cent. of market value), for the words "90 per cent." there shall be substituted the words "80 per cent.".

(4) Subsection (2) above shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

[F1]63 Profit sharing schemes.

. . . . . .

Textual Amendments

F1 S. 63 repealed*(having effect for the year 1991-92 and subsequent years of assessment)* by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt.V** Note 6.

64 Share option and profit sharing schemes: shares of consortium member.

In paragraph 10 of Schedule 9 to the Taxes Act 1988, paragraph (c)(ii)(which requires a consortium member to hold not less than three-twentieths of share capital of grantor company etc. if member's shares are to qualify as scheme shares) shall cease to have effect.

65 Employee share schemes: material interest.

In Schedule 9 to the Taxes Act 1988 the following paragraph shall be inserted after paragraph 39—

Shares subject to an employee benefit trust

"40 (1) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (3) below applies in relation to him.

(2) In this paragraph "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8.

(3) This sub-paragraph applies in relation to an individual if at any time on or after 14th March 1989—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company.

(4) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee."

66 Priority share allocations for employees etc.

(1) In relation to offers made on or after 11th October 1988, section 68 of the [M5]Finance Act 1988 (which provides for the benefits derived from priority rights in share offers to be disregarded in certain circumstances) shall have effect with the following amendments.

(2) In subsection (1), the words from "at the fixed price" to "tendered" shall be omitted.

(3) After that subsection there shall be inserted—

"(1A) Where the price payable by the director or employee is less than the fixed price or the lowest price successfully tendered, subsection (1) above shall not apply to the benefit represented by the difference in price."

(4) In subsection (2), for paragraph (a) (priority shares not to exceed 10 percent. of shares subject to the offer) there shall be substituted—

"(a) that the aggregate number of shares subject to the offer that may be allocated as mentioned in subsection (1)(b) above does not exceed the limit specified in subsection (2A) below or, as the case may be, either of the limits specified in subsection (2B) below".

(5) After subsection (2) there shall be inserted—

"(2A) Except where subsection (2B) below applies, the limit relevant for the purposes of subsection (2)(a) above is 10 per cent. of the shares subject to the offer (including the shares that may be allocated as mentioned in subsection (1)(b) above).

(2B) Where the offer is part of arrangements which include one or more other offers to the public of shares of the same class, the limits relevant for the purposes of subsection (2)(a) above are—

(a) 40 per cent. of the shares subject to the offer (including the shares that may be allocated as mentioned in subsection (1)(b) above), and

(b) 10 per cent. of all the shares of the class in question (including the shares that may be so allocated) that are subject to any of the offers forming part of the arrangements."

Marginal Citations

M5 1988 c. 39.

Employee share ownership trusts

67 Tax relief.

(1) This section applies where—

(a) a company expends a sum in making a payment by way of contribution to the trustees of a trust which is a qualifying employee share ownership trust at the time the sum is expended,

(b) at that time, the company or a company which it then controls has employees who are eligible to benefit under the terms of the trust deed,

(c) at that time the company is resident in the United Kingdom,

(d) before the expiry of the expenditure period the sum is expended by th etrustees for one or more of the qualifying purposes, and

(e) before the end of the claim period a claim for relief under this section is made.

(2) In such a case the sum—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or

(b) if the company is an investment company or a company in the case of which section 75 of the Taxes Act 1988 applies by virtue of section 76 of that Act, shall be treated as expenses of management.

(3) For the purposes of subsection (1)(b) above, the question whether one company is controlled by another shall be construed in accordance with section840 of the Taxes Act 1988.

(4) For the purposes of subsection (1)(d) above each of the following is a qualifying purpose—

(a) the acquisition of shares in the company which established the trust;

(b) the repayment of sums borrowed;

(c) the payment of interest on sums borrowed;

(d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;

(e) the meeting of expenses.

(5) For the purposes of subsection (1)(d) above the expenditure period is the period of nine months beginning with the day following the end of the period of account in which the sum is charged as an expense of the company, or such longer period as the Board may allow by notice given to the company.

(6) For the purposes of subsection (1)(e) above the claim period is the period of two years beginning with the day following the end of the period of account in which the sum is charged as an expense of the company.

(7) For the purposes of this section the trustees of an employee share ownership trust shall be taken to expend sums paid to them in the order in which the sums are received by them (irrespective of the number of companies making payments).

Modifications etc. (not altering text)

C12 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

68 Principal charges to tax.

(1) This section applies where a chargeable event (within the meaning of section 69 below) occurs in relation to the trustees of an employee share ownership trust.

(2) In such a case—

(a) the trustees shall be treated as receiving, when the event occurs, annual profits or gains whose amount is equal to the chargeable amount (within the meaning of section 70 below),

(b) the profits or gains shall be chargeable to tax under Case VI of Schedule D for the year of assessment in which the event occurs, and

(c) the rate at which the tax is chargeable shall be a rate equal to the sumof the basic rate and the additional rate for the year of assessment in which the event occurs.

(3) If the whole or any part of the tax assessed on the trustees is not paid before the expiry of the period of six months beginning with the day on which the assessment becomes final and conclusive, a notice of liability to tax under this subsection may be served on a qualifying company and the tax or the part unpaid (as the case may be) shall be payable by the company on service of the notice.

(4) Where a notice of liability is served under subsection (3) above—

(a) any interest which is due on the tax or the part (as the case may be) and has not been paid by the trustees, and

(b) any interest accruing due on the tax or the part (as the case may be)after the date of service,

shall be payable by the company.

(5) Where a notice of liability is served under subsection (3) above and any amount payable by the company (whether on account of tax or interest) is not paid by the company before the expiry of the period of three months beginning with the date of service, the amount unpaid may be recovered from the trustees(without prejudice to the right to recover it instead from the company).

(6) For the purposes of this section each of the following is a qualifying company—

(a) the company which established the employee share ownership trust;

(b) any company falling within subsection (7) below.

(7) A company falls within this subsection if, before it is sought to serve a notice of liability on it under subsection (3) above—

(a) it has paid a sum to the trustees, and

(b) the sum has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.

Modifications etc. (not altering text)

C13 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

69 Chargeable events.

(1) For the purposes of section 68 above each of the following is a chargeableevent in relation to the trustees of an employee share ownership trust—

(a) the transfer of securities by the trustees, if the transfer is not aqualifying transfer;

(b) the transfer of securities by the trustees to persons who are at the timeof the transfer beneficiaries under the terms of the trust deed, if the termson which the transfer is made are not qualifying terms;

(c) the retention of securities by the trustees at the expiry of the periodof seven years beginning with the date on which they acquired them;

(d) the expenditure of a sum by the trustees for a purpose other than aqualifying purpose.

(2) For the purposes of subsection (1)(a) above a transfer is a qualifyingtransfer if it is made to a person who at the time of the transfer is abeneficiary under the terms of the trust deed.

(3) For the purposes of subsection (1)(a) above a transfer is also aqualifying transfer if—

(a) it is made to the trustees of a scheme which at the time of the transferis a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988,and

(b) it is made for a consideration which is not less than the price thesecurities might reasonably be expected to fetch on a sale in the open market.

(4) For the purposes of subsection (1)(b) above a transfer of securities ismade on qualifying terms if—

(a) all the securities transferred at the same time are transferred on similarterms,

(b) securities have been offered to all the persons who are beneficiariesunder the terms of the trust deed when the transfer is made, and

(c) securities are transferred to all such beneficiaries who have accepted.

(5) For the purposes of subsection (1)(d) above each of the following is aqualifying purpose—

(a) the acquisition of shares in the company which established the trust;

(b) the repayment of sums borrowed;

(c) the payment of interest on sums borrowed;

(d) the payment of any sum to a person who is a beneficiary under the termsof the trust deed;

(e) the meeting of expenses.

(6) For the purposes of subsection (4) above, the fact that terms varyaccording to the levels of remuneration of beneficiaries, the length of theirservice, or similar factors, shall not be regarded as meaning that the termsare not similar.

(7) In ascertaining for the purposes of this section whether particularsecurities are retained, securities acquired earlier by the trustees shall betreated as transferred by them before securities acquired by them later.

(8) For the purposes of this section trustees—

(a) acquire securities when they become entitled to them (subject to theexceptions in subsection (9) below);

(b) transfer securities to another person when that other becomes entitled tothem;

(c) retain securities if they remain entitled to them.

(9) The exceptions are these—

(a) if securities are issued to trustees in exchange in circumstancesmentioned in section 85(1) of the [M6]Capital Gains Tax Act1979, they shall be treated as having acquired them when they became entitledto the securities for which they are exchanged;

(b) if trustees become entitled to securities as a result of a reorganisation,they shall be treated as having acquired them when they became entitled to theoriginal shares which those securities represent (construing "reorganisation" and "original shares" in accordance with section77 of that Act).

(10) If trustees agree to take a transfer of securities, for the purposes ofthis section they shall be treated as becoming entitled to them when theagreement is made and not on a later transfer made pursuant to the agreement.

(11) If trustees agree to transfer securities to another person, for thepurposes of this section the other person shall be treated as becomingentitled to them when the agreement is made and not on a later transfer madepursuant to the agreement.

(12) For the purposes of this section the following are securities—

(a) shares;

(b) debentures.

Modifications etc. (not altering text)

C14 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

C15 *Definition employed for purposes of* Finance Act1990 (c. 29) s. 36—*roll-over relief where replacement assetowned*

Marginal Citations

M6 1979 c. 14.

70 Chargeable amounts.

(1) This section has effect to determine the chargeable amount for the purposes of section 68 above.

(2) If the chargeable event falls within section 69(1)(a), (b) or (c) above the following rules shall apply—

(a) if the event constitutes a disposal of the securities by the trustees for the purposes of the Capital Gains Tax Act 1979, the chargeable amount is an amount equal to the sums allowable under section 32(1)(a) and (b) of that Act;

(b) if the event does not constitute such a disposal, the chargeable amount is an amount equal to the sums which would be so allowable had the trustees made a disposal of the securities for the purposes of that Act at the time the chargeable event occurs.

(3) If the chargeable event falls within section 69(1)(d) above the chargeable amount is an amount equal to the sum concerned.

Modifications etc. (not altering text)

C16 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

71 Further charges to tax: borrowing.

(1) This section applies where—

(a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees of an employee share ownership trust,

(b) at the time the event occurs anything is outstanding in respect of the principal of an amount or amounts borrowed at any time by the trustees, and

(c) the chargeable event is one as regards which section 72(2)(b) below applies.

(2) In the following provisions of this section—

(a) "the initial chargeable event" means the event referred to in subsection (1)(a) above, and

(b) "the total outstanding amount" means the total amount outstanding, at the time the initial chargeable event occurs, in respect of the principal of an amount or amounts borrowed at any time by the trustees.

(3) If any of the total outstanding amount is repaid after the initial chargeable event occurs, a further chargeable event shall occur in relation to the trustees at the end of the year of assessment in which the repayment is made.

(4) In such a case—

(a) the trustees shall be treated as receiving, when the further event occurs, annual profits or gains whose amount is equal to the chargeable amount,

(b) the profits or gains shall be chargeable to tax under Case VI of Schedule D for the year of assessment at the end of which the further event occurs, and

(c) the rate at which the tax is chargeable shall be a rate equal to the sumof the basic rate and the additional rate for the year of assessment at the end of which the further event occurs.

(5) Subject to subsection (6) below, for the purposes of subsection (4) above the chargeable amount is an amount equal to the aggregate of the total outstanding amount repaid in the year of assessment.

(6) In a case where section 72(2)(b) below had effect in the case of the initial chargeable event, for the purposes of subsection (4) above the chargeable amount is an amount equal to the smaller of—

(a) the aggregate of the total outstanding amount repaid in the year of assessment, and

(b) an amount found by applying the formula A-B-C.

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

(a) A is the amount which would be the chargeable amount for the initial chargeable event apart from section 72(2) below,

(b) B is the chargeable amount for the initial chargeable event, and

(c) C is the amount (if any) found under subsection (8) below.

(8) If, before the further chargeable event occurs, one or more prior chargeable events have occurred in relation to the trustees by virtue of the prior repayment of any of the total outstanding amount found for the time the initial chargeable event occurs, the amount found under this subsection is an amount equal to the chargeable amount for the prior chargeable event or to the aggregate of the chargeable amounts for the prior chargeable events (as the case may be).

(9) In a case where—

(a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees in circumstances mentioned in subsection (1) above,

(b) a sum falls to be included in the total outstanding amount found for the time the event occurs,

(c) another chargeable event (within the meaning of that section) occurs in relation to the trustees in circumstances mentioned in subsection (1) above, and

(d) the same sum or a part of it would (apart from this subsection) fall to be included in the total outstanding amount found for the time the event occurs,

the sum or part (as the case may be) shall not be included in the total outstanding amount found for the time the other chargeable event occurs.

(10) In ascertaining for the purposes of this section whether a repayment is in respect of a particular amount, amounts borrowed earlier shall be taken to be repaid before amounts borrowed later.

(11) Subsections (3) to (7) of section 68 above shall apply where tax is assessed by virtue of this section as they apply where tax is assessed by virtue of that section.

Modifications etc. (not altering text)

C17 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

72 Limit on chargeable amount.

(1) For the purposes of this section each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—

(a) an event which is a chargeable event by virtue of section 69 above;

(b) an event which is a chargeable event by virtue of section 71 above.

(2) If a chargeable event (the event in question) occurs in relation to the trustees of an employee share ownership trust, the following rules shall apply—

(a) the amount which would (apart from this subsection) be the chargeable amount for the event in question shall be aggregated, for the purposes of paragraph (b) below, with the chargeable amounts for other chargeable events(if any) occurring in relation to the trustees before the event in question,

(b) if the amount which would (apart from this subsection) be the chargeable amount for the event in question (or the aggregate found under paragraph (a)above, if there is one) exceeds the deductible amount, the chargeable amount for the event in question shall be the amount it would be apart from this subsection less an amount equal to the excess, and

(c) section 70(2) and (3) and section 71(5) above shall have effect subject to paragraph (b) above.

(3) For the purposes of subsection (2) above the deductible amount (as regards the event in question) is an amount equal to the total of the sums falling within subsection (4) below.

(4) A sum falls within this subsection if it has been received by the trustees before the occurrence of the event in question and—

(a) it has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, before the occurrence of that event, or

(b) it would fall to be so deducted or treated if a claim for relief under section 67 above had been made immediately before the occurrence of that event.

Modifications etc. (not altering text)
C18 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

73 Information.

(1) An inspector may by notice in writing require a return to be made by the trustees of an employee share ownership trust if they have at any time received a sum which has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.

(2) Where he requires such a return to be made the inspector shall specify the information to be contained in it.

(3) The information which may be specified is information the inspector needs for the purposes of sections 68 to 72 above, and may include information about—
- (a) sums received (including sums borrowed) by the trustees;
- (b) expenditure incurred by them;
- (c) assets acquired by them;
- (d) transfers of assets made by them.

(4) The information which may be required under subsection (3)(a) above may include the persons from whom the sums were received.

(5) The information which may be required under subsection (3)(b) above may include the purpose of the expenditure and the persons receiving any sums.

(6) The information which may be specified under subsection (3)(c) above may include the persons from whom the assets were acquired and the consideration furnished by the trustees.

(7) The information which may be included under subsection (3)(d) above may include the persons to whom assets were transferred and the consideration furnished by them.

(8) In a case where a sum has been deducted as mentioned in section 67(2)(a)above, or treated as mentioned in section 67(2)(b) above, the inspector shall send to the trustees to whom the payment was made a certificate stating—
- (a) that a sum has been so deducted or so treated, and
- (b) what sum has been so deducted or so treated.

(9) In the Table in section 98 of the [M7]Taxes Management Act1970 (penalties for failure to comply with notices etc.) at the end of the first column there shall be inserted— " Section 73 of the Finance Act 1989 ".

Modifications etc. (not altering text)
C19 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

Marginal Citations
M7 1970 c. 9.

74 Interpretation.

Schedule 5 to this Act shall have effect to determine whether, for the purposes of sections 67 to 73 above, a trust is at a particular time—

(a) an employee share ownership trust;

(b) a qualifying employee share ownership trust.

Modifications etc. (not altering text)

C20 *See*Finance Act 1990 (c. 29) ss.31–40—*.roll-over relief for disposal of assets to employeeshare ownership trusts*

Pensions etc.

75 Retirement benefits schemes.

Schedule 6 to this Act (which relates to retirement benefits schemes)shall have effect.

76 Non-approved retirement benefits schemes.

(1) In computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of any expenses falling within subsection (2) or (3) below; and no expenses falling within either of those subsections shall be treated for the purposes of section 75 of the Taxes Act 1988 (investment companies) as expenses of management.

(2) Expenses fall within this subsection if—

(a) they are expenses of providing benefits pursuant to a relevant retirement benefits scheme, and

(b) the benefits are not ones in respect of which a person is on receipt chargeable to income tax.

(3) Expenses fall within this subsection if—

(a) they are expenses of paying any sum pursuant to a relevant retirement benefits scheme with a view to the provision of any benefits, and

(b) the sum is not one which when paid is treated as the income of a person by virtue of section 595(1) of the Taxes Act 1988 (sum paid with a view to the provision of any relevant benefits for an employee).

(4) No sum shall be deducted in respect of any expenses falling within subsection (5) or (6) below—

(a) in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, or

(b) by virtue of section 75 of the Taxes Act 1988,

unless the sum has actually been expended.

(5) Expenses fall within this subsection if—

(a) they are expenses of providing benefits pursuant to a relevant retirement benefits scheme, and

(b) the benefits are ones in respect of which a person is on receipt chargeable to income tax.

(6) Expenses fall within this subsection if—

(a) they are expenses of paying any sum pursuant to a relevant retirement benefits scheme with a view to the provision of any benefits, and

(b) the sum is one which when paid is treated as the income of a person by virtue of section 595(1) of the Taxes Act 1988.

(7) In this section—

"retirement benefits scheme" has the same meaning as in Chapter I of Part XIV of the Taxes Act 1988, and

references to a relevant retirement benefits scheme are references to a retirement benefits scheme which is not of a description mentioned in section596(1)(a), (b) or (c) of the Taxes Act 1988.

(8) This section has effect in relation to expenses incurred on or after the day on which this Act is passed.

77 Personal pension schemes.

Schedule 7 to this Act (which relates to personal pension schemes) shall have effect.

Unit trusts etc.

78, 79. . . . . F2

Textual Amendments

F2 Ss. 78, 79 repealed by Finance Act 1990 (c. 29, SIF 58), s.132, **Sch. 19 Pt. IV** Note

80 Gilt unit trusts.

(1) Where, in the case of a certified unit trust and apart from thissubsection, section 468(5) of the Taxes Act 1988 would apply as regards adistribution period beginning after 31st December 1989, section 468(5) shallnot apply in the case of the trust as regards that period.

(2) Where by virtue of subsection (1) above the last distribution period asregards which section 468(5) applies in the case of a certified unit trust isone beginning on or before, and ending after, 31st December 1989, thetrustees' liability to income tax in respect of any source of incomechargeable under Case III of Schedule D shall be assessed as if they hadceased to possess the source of income on the last day of that distributionperiod.

(3) But where section 67 of the Taxes Act 1988 applies by virtue of subsection(2) above, it shall apply with the omission from subsection (1)(b) of thewords from "and shall" to "this provision".

(4) For the purposes of this section "certified unit trust"means, as respects a distribution period, a unit trust scheme in the case ofwhich—

(a) an order under section 78 of the [M8] Financial ServicesAct 1986 is in force during the whole or part of the accounting period inwhich the distribution period falls, and

(b) a certificate under section 78(8) of that Act, certifying that the scheme complies with the conditions necessary for it to enjoy the rights conferredby the UCITS directive, has been issued before or at any time during thataccounting period.

(5) In this section—

"distribution period" has the same meaning as in section 468 of the Taxes Act 1988,

"the UCITS directive" means the directive of the Council of the European Communities, dated 20th December 1985, on theco-ordination of laws, regulations and administrative provisions relating toundertakings for collective investment in transferable securities (No.85/611/EEC), and

"unit trust scheme" has the same meaning as in section 469 of theTaxes Act 1988.

Marginal Citations

M8 1986 c. 60.

81 Offshore funds operating equalisation arrangements.

(1) In section 758 of the Taxes Act 1988 (offshore funds operating equalisation arrangements) in subsection (6) (reference to section 78 of the [M9] Capital Gains Tax Act 1979 not to include reference to it as applied by section 82) for the words "but not" there shall be substituted the words "and a reference to section 78".

(2) This section shall apply where a conversion of securities occurs on or after 14th March 1989; and "conversion of securities" here has the same meaning as in section 82 of the Capital Gains Tax Act 1979.

Marginal Citations

M9 1979 c. 14.

Life assurance

82 Calculation of profits.

(1) Where the profits of an insurance company in respect of its life assurance business are, for the purposes of the Taxes Act 1988, computed in accordance with the provisions of that Act applicable to Case I of Schedule D, then, in calculating the profits for any period of account,—

(a) there shall be taken into account as an expense (so far as not so taken into account apart from this section) any amounts which **[**[F3]are allocated to, and any amounts of **[**[F4]tax or**]** foreign tax which are expended on behalf of, policy holders or annuitants in respect of the period**]**; and

(b) if, at the end of the period, the company has an unappropriated surplus on valuation, as shown in its return for the purposes of the [M10] Insurance Companies Act 1982, then, subject to subsection (3) below, the closing liabilities of the period may include such amount, forming part of that surplus, as is required to meet the reasonable expectations of policyholders or annuitants with regard to bonuses or other additions to benefit of a discretionary nature.

(2) For the purposes of this section an amount is allocated to policy holders or annuitants if, and only if,—

(a) bonus payments are made to them; or

(b) reversionary bonuses are declared in their favour or a reduction is made in the premiums payable by them;

and the amount of the allocation is, in a case within paragraph (a)above, the amount of the payments and, in a case within paragraph (b) above, the amount of the liabilities assumed by the company in consequence of the declaration or reduction.

(3) The amount which, apart from this subsection, would be included in the closing liabilities of a period of account by virtue of subsection (1)(b)above shall be reduced or, as the case may be, extinguished by deducting there from the total of the amounts which—

(a) for periods of account ending before 14th March 1989 have been excluded, by virtue of section 433 of the Taxes Act 1988, as being reserved for policyholders or annuitants, and

(b) have not before that date either been allocated to or expended on behalf of policy holders or annuitants or been treated as profits of an accounting period on ceasing to be so reserved.

(4) Where the closing liabilities of a period of account include an amount by virtue of subsection (1)(b) above, the like amount shall be included in the opening liabilities of the next following period of account.

(5) This section has effect with respect to periods of account ending on or after 14th March 1989; and the following provisions of this section shall apply for the purposes of the application of this section to any such period which begins before that date (in this section referred to as a "straddling period").

(6) For the purposes referred to in subsection (5) above, it shall be assumed that the straddling period consists of two separate periods of account,—

(a) the first beginning at the beginning of the straddling period and ending on 13th March 1989 (in this section referred to as "the first notional period"); and

(b) the second beginning on 14th March 1989 and ending at the end of the straddling period (in this section referred to as "the second notional period");

and any reference in subsection (7) or subsection (8) below to a time apportionment is a reference to an apportionment made by reference to the respective lengths of the two notional periods.

(7) To determine the profits of the first notional period and the amount excluded from the profits of that period by virtue of section 433 of the Taxes Act 1988 as being reserved for policy holders or annuitants,—

(a) in the first instance the profits of the straddling period and the amount so excluded from those profits shall be computed as if subsections (1) to (4)above did not apply with respect to any part of the straddling period; and

(b) there shall then be determined that part of the profits and the amount computed under paragraph (a) above which, on a time apportionment, is properly attributable to the first notional period.

(8) To determine the profits of the second notional period,—

(a) in the first instance the profits of the straddling period shall be computed as if subsections (1) to (4) above applied to the whole of the straddling period; and

(b) there shall then be determined that part of the profits computed under paragraph (a) above which, on a time apportionment, is properly attributable to the second notional period.

Textual Amendments

F3 Finance Act 1990 (c. 29) s. 43(1)(3)—*deemed always to have had effect. Previously*
", in respect of the period, are allocated to or expended on behalf of policy holders or annuitants"

F4 *Words*
"tax or"
omitted when s.82(1)(2)(4) and s. 83*applied to profits chargeable under ScheduleD* (see Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1) s. 441)

Modifications etc. (not altering text)

C21 S. 82 modified (31.7.1992 with effect for accounting periods beginning on and after 1.1.1990) by S.I. 1992/1655, **regs. 1**,17
S. 82 modified (23.3.1999 with effect with respect to accounting periods of insurance companies ending on or after 1.7.1999) by S.I. 1999/498, **regs. 1**, 10

C22 S. 82 subs. (1)(2) and (4) and s. 83*apply to profits chargeable under* Schedule D (*see*Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 441**)
S. 82(1)(2)(4) applied (with modifications) (1.5.1995) by 1988 c. 1, **s. 439B(3)(a)** (as inserted (1.5.1995) by 1998 c. 36, s. 51, Sch. 8 Pt. I para. 27(1) (with Sch. 8 paras. 55(2), **57(1)**)

C23 *See*S.I. 1989/2417, **reg. 5** (*in* PartIII Vol.5)*for modification applicable to life or endowment businesscarried on by registered friendly societies (but S.I. 1989/2417 was revoked (31.7.1992) by S.I. 1992/1655, **regs. 1**, 22 and deemed never to have had effect).*

Marginal Citations

M10 1982 c.50.

83 Receipts to be brought into account.

(1) Where the profits of an insurance company in respect of its life assurancebusiness are, for the purposes of the Taxes Act 1988, computed in accordancewith the provisions of that Act applicable to Case I of Schedule D, then, sofar as referable to that business, the following items, as brought intoaccount for a period of account (and not otherwise), namely,—

(a) the company's investment income from the assets of its long-term businessfund, and

(b) any increase in the value (whether realised or not) of those assets,

shall be taken into account as receipts of the period; and if for anyperiod of account there is a reduction in the value referred to in paragraph(b) above (as brought into account for the period), that reduction shall betaken into account as an expense of that period.

(2) Except in so far as regulations made by the Treasury otherwise provide,in subsection (1) above "brought into account" means broughtinto account in the revenue account prepared for the purposes of the [M11] Insurance Companies Act 1982.

(3) Subject to subsection (5) below, this section has effect with respect toperiods of account ending on or after 1st January 1990; and the followingprovisions of this section shall apply for the purposes of the application ofthis section to any such period which begins before that date (in this sectionreferred to as a "straddling period").

(4) Subject to subsection (5) below, for the purposes referred to insubsection (3) above, it shall be assumed that the straddling period consistsof two separate periods of account, —

(a) the first beginning at the beginning of the straddling period and endingon 31st December 1989 (in this section referred to as "the first notionalperiod"); and

(b) the second beginning on 1st January 1990 and ending at the end of thestraddling period (in this section referred to as "the second notionalperiod");

and any reference in subsection (6) or subsection (7) below to a timeapportionment is a reference to an apportionment made by reference to therespective lengths of the two notional periods.

(5) In the case of any company which, by notice in writing given to theinspector on or before 31st December 1992, so elects,—

(a) subsections (3) and (4)(b) above shall have effect as if for "1stJanuary 1990"there were substituted "14th March 1989"; and

(b) subsection (4)(a) above shall have effect as if for "31st December"there were substituted "13th March".

(6) To determine the profits of the first notional period,—

(a) in the first instance the profits of the straddling period shall becomputed as if subsections (1) and (2) above did not apply with respect to anypart of that period; and

(b) there shall then be determined that part of the profits computed under paragraph (a) above which, on a time apportionment, is properly attributable to the first notional period.

(7) To determine the profits of the second notional period,—

(a) in the first instance the profits of the straddling period shall be computed as if subsections (1) and (2) above applied with respect to the wholeof that period; and

(b) there shall then be determined that part of the profits computed under paragraph (a) above which, on a time apportionment, is properly attributableto the second notional period.

Modifications etc. (not altering text)

C24 S. 82 subs. (1)(2) and (4) and s. 83*apply to profitschargeable under* Schedule D (*see* Income and Corporation TaxesAct 1988 (c. 1, SIF 63:1), s. 441)

C25 S. 83 modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2)**, 33, 34

C26 *See*Income and Corporation Taxes Act 1988 (c. 1,SIF 63:1), **s. 432B** to E—*rules for determining amounts referable tolife assurance business*

C27 S. 83(1) restricted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 65(2)(d)(5)**

C28 *See* S.I. 1989/2417, **reg. 5** (*in* Part III Vol. 5) *for the omission of* subs. (2) *in the case of life endowment business carried on by registered friendly societies (but S.I. 1989/2417 was revoked (31.7.1992) by S.I. 1992/1655, **regs. 1**, 22 and deemed never to have had effect).*
S. 83(2) modified (31.7.1992 with effect for accounting periods beginning on and after 1.1.1990) by S.I. 1992/1655, **regs. 1**,18.

Marginal Citations

M11 1982c. 50.

VALID FROM 01/05/1995

[F5 83A Meaning of "brought into account".

(1) In section 83 "brought into account" means brought into account in an account which is recognised for the purposes of that section.

(2) Subject to the following provisions of this section and to any regulations made by the Treasury, the accounts recognised for the purposes of that section are—

(a) a revenue account prepared for the purposes of the Insurance Companies Act 1982 in respect of the whole of the company's long term business;

(b) any separate revenue account required to be prepared under that Act in respect of a part of that business.

Paragraph (b) above does not include accounts required in respect of internal linked funds.

(3) Where there are prepared any such separate accounts as are mentioned in subsection (2)(b) above, reference shall be made to those accounts rather than to the account for the whole of the business.

(4) If in any such case the total of the items brought into account in the separate accounts is not equal to the total amount brought into account in the account prepared for the whole business, there shall be treated as having been required and prepared a further separate revenue account covering the balance.

(5) Where a company carries on both ordinary long term business and industrial assurance business, the references above to the company's long term business shall be construed as references to either or both of those businesses, as the case may require.]

Textual Amendments

F5 SS. 83, 83A substituted for s. 83 (1.5.1995) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 16(1)** (with Sch. 8 paras. 55(2), 57(1))

Modifications etc. (not altering text)

C29 S. 83A modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2)**, 36, 37

VALID FROM 29/04/1996

[F6 83AA Amounts added to long term business fund of a company in excess of that company's loss.

(1) If one or more relevant amounts are brought into account for a period of account of a company and either—

(a) the aggregate of those amounts exceeds the loss which, after the making of any reduction under subsection (6) below but before any application of section 83(3) above in relation to that period, would have arisen to the company in that period in respect of its life assurance business, or

(b) no such loss would have so arisen,

the surplus for that period shall be applied in accordance with the following provisions of this section and section 83AB below.

(2) In this section—

"relevant amount" means so much of any amount which is added to the long term business fund of a company as mentioned in subsection (3) of section 83 above as does not fall within any of the paragraphs of subsection (4) of that section;

"surplus", in relation to a period of account of a company, means (subject to section 83AB(2) below)—

(a) if the aggregate of the relevant amounts brought into account for that period exceeds the amount of any loss which, after the making of any reduction under subsection (6) below but before any application of section 83(3) above in relation to that period, would have arisen to the company in that period in respect of its life assurance business, the amount of the excess; or

(b) if no such loss would have so arisen, the aggregate of the relevant amounts brought into account for that period.

(3) Where, apart from section 83AB(2) below, there is a surplus for a period of account of a company for which there are brought into account one or more relevant amounts which were added to the company's long term business fund as part of, or in connection with, a particular transfer of business, the appropriate portion of the surplus for that period shall be treated as reducing (but not below nil) so much of any loss arising to the transferor company in the relevant accounting period as, on a just and reasonable apportionment of the loss, is referable to the business which is the subject of that particular transfer.

(4) For the purposes of subsection (3) above, the appropriate portion of the surplus for a period of account of a company is, in the case of any particular transfer of business, the amount which bears to that surplus (apart from any additions by virtue of section 83AB(2) below) the proportion which A bears to B, where—

A is the aggregate of such of the relevant amounts added to the company's long term business fund as part of, or in connection with, that particular transfer of business as are brought into account for that period, and

B is the aggregate of the relevant amounts brought into account for that period.

(5) Any reduction pursuant to subsection (3) above of the loss arising to the transferor company in the relevant accounting period shall be made after—

(a) the making of any reduction under subsection (6) below, and

(b) any application of section 83(3) above,

in relation to the period of account of that company in which falls the date of the particular transfer of business in question.

(6) Any loss arising to a company in respect of its life assurance business in a period of account subsequent to one for which there is a surplus shall be reduced (but not below nil) by so much of that surplus as cannot be applied—

(a) under subsection (3) above;

(b) under this subsection, in the reduction of a loss arising to the company in an earlier period of account; or

(c) under section 83AB below, in relation to a transfer of business from the company in that or any earlier period of account.

(7) Any reduction pursuant to subsection (6) above of a loss arising to a company in a period of account shall be made—

(a) before any application of section 83(3) above in relation to that period, and

(b) if the company is also the transferor company in relation to a particular transfer of business, before the making of any reduction under subsection (3) above in relation to that one of its accounting periods which is the relevant accounting period in relation to that transfer.

(8) A surplus in respect of an earlier period of account shall be applied under subsection (6) above before a surplus in respect of a later period of account.

(9) All such adjustments to the liability to tax of any person shall be made, whether by assessment or otherwise, as may be required to give effect to this section.

(10) In this section—

"add" has the same meaning as in section 83 above;

"the relevant accounting period" means the accounting period of the transferor company which—

(a) ends on the date of the transfer of business mentioned in subsection (3) above, or

(b) if that transfer of business falls within section 83(6)(c) above and no accounting period of the transferor company ends on that date, ends next after that date;

"transfer of business" has the same meaning as in section 83(3) above;

"the transferor company" means the company from which the transfer of business mentioned in subsection (3) above is effected.

(11) A transfer of business falling within section 83(6)(c) above shall be treated for the purposes of this section as a transfer of business from the company which is the reinsured under the contract of reinsurance.**]**

Textual Amendments

F6 Ss. 83AA, 83AB inserted (29.4.1996 with effect as mentioned in Sch. 31 paras. 9(1), 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 5**

Modifications etc. (not altering text)

C30 S. 83AA modified (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(1)**

C31 S. 83AA restricted (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(3)**

VALID FROM 29/04/1996

[F7 83AB Treatment of surplus where there is a subsequent transfer of business from the company etc.

(1) If an amount is added to the long term business fund of a company as part of or in connection with a transfer of business to the company, or a demutualisation of the company not involving a transfer of business, and—

(a) there is a surplus for the period of account of the company for which that amount is brought into account,

(b) at any time after the transfer of business or demutualisation, there is a transfer of business from the company (the "subsequent transfer"), and

(c) at the end of the relevant period of account there remains at least some of the surplus mentioned in paragraph (a) above which cannot be applied—

(i) under subsection (3) of section 83AA above,

(ii) under subsection (6) of that section, in the reduction of a loss arising to the company in an earlier period of account, or

(iii) under this section, in relation to an earlier subsequent transfer,

so much of the surplus falling within paragraph (c) above as, on a just and reasonable apportionment, is referable to business which is the subject of the subsequent transfer shall be applied under this section.

(2) An amount of surplus which is to be applied under this section shall be so applied by being treated as an amount of surplus (additional to any other amounts of surplus) for the period of account of the transferee company which last precedes the period of account of that company in which the subsequent transfer is effected, whether or not there is in fact any such preceding period of account.

(3) If, in a case where an amount is treated under subsection (2) above as an amount of surplus for a period of account of a company, the period is not one for which there is brought into account an amount added to the company's long term business fund in connection with the subsequent transfer, subsection (1) above shall have effect in relation to any transfer of business from the company subsequent to that transfer as if an amount had been so added and had been brought into account for that period.

(4) Any question as to what is a just and reasonable apportionment in any case for the purposes of subsection (1) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but any person affected by the apportionment shall be entitled to appear and be heard or make representations in writing.

(5) A surplus in respect of an earlier period of account shall be applied under this section before a surplus in respect of a later period of account.

(6) All such adjustments to the liability to tax of any person shall be made, whether by assessment or otherwise, as may be required to give effect to this section.

(7) In this section—

"add" has the same meaning as in section 83 above;

"demutualisation" has the same meaning as in section 83 above;

"the relevant period of account" means the period of account of the company from which the subsequent transfer is effected which consists of or includes the accounting period of that company which—

(a) ends with the day on which the subsequent transfer is effected; or

(b) if the subsequent transfer is a transfer of business falling within section 83(6)(c) above and no accounting period of the company ends on that day, ends next after that day;

"surplus" has the same meaning as in section 83AA above;

"transfer of business" has the same meaning as in section 83(3) above;

"transferee company" means the company to which the subsequent transfer of business is effected.

(8) Where it is necessary for any purpose of this section to identify the time at which a demutualisation of a company takes place, that time shall be taken to be the time when the company first issues shares.

(9) A transfer of business falling within section 83(6)(c) above shall be treated for the purposes of this section as a transfer of business from the company which is the reinsured under the contract of reinsurance to the company which is the reinsurer under that contract.**]**

Textual Amendments

F7 SS. 83AA, 83AB inserted (29.4.1996 with effect as mentioned in Sch. 31 paras. 9(1), 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 5**

Modifications etc. (not altering text)

C32 S. 83AB modified (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(1)**

84 Interpretation of sections 85 to 89 and further provisions about insurance companies.

[F8(1) In sections 85 to 89 below "basic life assurance and general annuity business" has the same meaning as in Chapter I of Part XII of the Taxes Act 1988.**]**

(2) Any reference in the sections referred to in subsection (1) above or the following provisions of this section to a straddling period is a reference to an accounting period which begins before 1st January 1990 and ends on or after that date.

(3) For the purposes of the sections referred to in subsection (1) above and for the purposes of subsection (5)(b) below it shall be assumed that a straddling period consists of two separate accounting periods—

(a) the first beginning at the beginning of the straddling period and ending on 31st December 1989; and

(b) the second beginning on 1st January 1990 and ending at the end of the straddling period;

and in those sections and subsection (5)(b) below the first of those two notional accounting periods is referred to as "the 1989 component period" and the second is referred to as "the 1990 component period".

(4) Chapter I of Part XII of the Taxes Act 1988 (insurance companies) shall have effect subject to the amendments in Schedule 8 to this Act, being—

(a) amendments relating to franked investment income, loss relief and group relief; and

(b) amendments consequential on or supplemental to sections 82 and 83 above and sections 85 to 89 below.

(5) Subject to subsection (6) below, in Schedule 8 to this Act,—

(a) paragraphs 2 and 6 shall be deemed to have come into force on 14th March1989; and

(b) the remainder shall have effect with respect to accounting periods beginning on or after 1st January 1990 (including the 1990 component period).

(6) Nothing in subsection (5) above affects the operation, by virtue of any provision of sections 82 and 83 above and sections 85 to 89 below, of any enactment repealed or amended by Schedule 8 to this Act and, so long as the provisions of that Schedule do not have effect in relation to sections 434 and435 of the Taxes Act 1988, nothing in subsection (5)(a) above affects the continuing operation of section 433 of that Act for the purpose only of determining the fraction of the profits referred to in subsection (6) of section 434 and subsection (1)(b) of section 435.

Textual Amendments

F8 S. 84(1) substituted*(for accounting periods beginning on or after 01.01.1992)* by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras.11, **18**

85 Charge of certain receipts of basic life assurance business.

(1) Subject to subsection (2) below, where the profits of an insurance company in respect of its life assurance business are not charged under Case I of Schedule D, there shall be chargeable under Case VI of that Schedule any receipts referable to the company's **[**[F9]basic life assurance and general annuity business**]**—

(a) which, if those profits were charged under Case I of Schedule D, would betaken into account in computing those profits; and

(b) which would not be within the charge to tax (except under Case I of Schedule D) apart from this section;

and for the purposes of paragraph (a) above, the provisions of section 83 above as to the manner in which any item is to be taken into account shall be disregarded.

(2) The receipts referred to in subsection (1) above do not include—

(a) any premium; or

(b) any sum received by virtue of a claim under an insurance contract(including a re-insurance contract); or

(c) any repayment or refund (in whole or in part) of a sum disbursed by the company as acquisition expenses falling within paragraphs (a) to (c) of subsection (1) of section 86 below; or

[[F10](ca) any reinsurance commission; or**]**

(d) any sum which is taken into account under section 76(1)(a) of the Taxes Act 1988 as a deduction from the amount treated as expenses of management of the company; or

(e) any sum which is not within the charge to tax (except under Case I of Schedule D) because of an exemption from tax.

(3) This section has effect with respect to the receipts of accounting periods beginning on or after 1st January 1990 (including the 1990 component period).

Textual Amendments

F9 Words in s. 85(1) substituted*(for accounting periods beginning on or after 01.01.1992)* by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras.12, **18**.

F10 Finance Act 1990 (c. 29), **s. 44(1)(4)**—*deemedalways to have had effect*

Modifications etc. (not altering text)

C33 S. 85(1) modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2)**, 38

86 Spreading of relief for acquisition expenses.

(1) For the purposes of this section, the acquisition expenses for any period of an insurance company carrying on life assurance business are such of the following expenses of management as are for that period attributable to the company's **[**F11basic life assurance and general annuity business**]**,—

(a) commissions (however described), other than commissions in respect of industrial life assurance business carried on by the company,

(b) any other expenses of management which are disbursed solely for the purpose of the acquisition of business, and

(c) so much of any other expenses of management which are disbursed partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,

less any such repayments or refunds falling within section 76(1)(c) ofthe Taxes Act 1988 as are received in the period **[**F12and less any reinsurance commission falling withinsection 76(1)(ca) of that Act**]**.

(2) The exclusion from paragraph (a) of subsection (1) above of commissions in respect of industrial life assurance business shall not prevent such commissions constituting expenses of management for the purposes of paragraph(b) or paragraph (c) of that subsection.

(3) Nothing in subsections (1) and (2) above applies to commissions (however described) in respect of insurances made before 14th March 1989, but without prejudice to the application of those subsections to any commission attributable to a variation on or after that date in a policy issued in respect of an insurance made before that date; and, for this purpose, the exercise of any rights conferred by a policy shall be regarded as a variation of it.

[F13(3A) Nothing in subsection (1), (2) or (3) above applies to commissions (however described) in respect of annuity contracts made in accounting periods beginning before 1st January 1992, but without prejudice to the application of subsections (1) and (2) above to any commission attributable to a variation, in an accounting period beginning

on or after that date, of an annuity contract so made; and for this purpose the exercise of any rights conferred by an annuity contract shall be regarded as a variation of it.**]**

(4) In subsection (1) above "the acquisition of business" includes

[[F14](a)**]** the securing on or after 14th March 1989 of the payment of increasedor additional premiums in respect of a policy of insurance issued in respect of an insurance already made (whether before, on or after that date) **[**[F15]and

(b) the securing, in an accounting period beginning on or after 1st January 1992, of the payment of increased or additional consideration in respect of an annuity contract already made (whether in an accounting period beginning before, or on or after, that date)**]**.

(5) In relation to any period, the expenses of management attributable to a company's **[**[F11]basic life assurance and general annuity business**]** are expenses—

(a) which are disbursed for that period (disregarding any treated as so disbursed by section 75(3) of the Taxes Act 1988); and

(b) which, disregarding subsection (6) below, are deductible as expenses of management in accordance with sections 75 and 76 of the Taxes Act 1988.

(6) Notwithstanding anything in sections 75 and 76 of the Taxes Act 1988 but subject to subsection (7) below, only one-seventh of the acquisition expenses for any accounting period (in this section referred to as "the baseperiod") shall be treated as deductible under those sections for the base period, and in subsections (8) and (9) below any reference to the full amount of the acquisition expenses for the base period is a reference to the amount of those expenses which would be deductible for that period apart from this subsection.

(7) In the case of the acquisition expenses for an accounting period or part of an accounting period falling wholly within 1990, subsection (6) above shall have effect as if for "one-seventh" there were substituted "five-sevenths"; and, in the case of the acquisition expenses for an accounting period or part of an accounting period falling wholly within 1991,1992 or 1993, the corresponding substitution shall be "four-sevenths", "three-sevenths" or "two-sevenths" respectively.

(8) Where, by virtue of subsection (6) (and, where appropriate, subsection(7)) above, only a fraction of the full amount of the acquisition expenses for the base period is deductible under sections 75 and 76 of the Taxes Act 1988 for that period, then, subject to subsection (9) below, a further one-seventh of the full amount shall be so deductible for each succeeding accounting period after the base period until the whole of the full amount has become so deductible, except that, for any accounting period of less than a year, the fraction of one-seventh shall be proportionately reduced.

(9) For any accounting period for which the fraction of the full amount of the acquisition expenses for the base period which would otherwise be deductible in accordance with subsection (8) above exceeds the balance of those expenses which has not become deductible for earlier accounting periods, only that balance shall be deductible.

(10) This section has effect for accounting periods beginning on or after 1stJanuary 1990 (including the 1990 component period).

Textual Amendments

F11 Words in s. 86(1) and (5) substituted*(for accounting periods beginning on or after 01.01.1992)* by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(1), **18**.

F12 Finance Act 1990 (c. 29), **s. 44(2)(4)(5)**—*deemed always to have had effect but not to apply to commissions in respect ofreinsurance liabilites in respect of insurances made before 14 March 1989: the amendment may apply to any reinsurance commission attributable to any variation, or exercise of rights, made on or after 14 March 1989*

F13 S. 86(3A) inserted*(for accounting periods beginning on or after 01.01.1992)* by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(2), **18**.

F14 S. 86(4)"(a)" inserted*(for accounting periods beginning on or after 01.01.1992)* by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(3), **18**.

F15 S. 86(4)(b) and word preceding it inserted*(for accounting periods beginning on or after 01.01.1992)* by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(3), **18**.

Modifications etc. (not altering text)

C34 S. 86 modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2)**, 39

87 Management expenses.

(1) Section 76 of the Taxes Act 1988 shall be amended in accordance with subsections (2) and (3) below.

(2) In subsection (1), after paragraph (b) there shall be inserted "and

(c) there shall be deducted from the amount treated as the expenses of management for any accounting period any repayment or refund (in whole or in part) of a sum disbursed by the company (for that or any earlier period) as acquisition expenses; and

(d) the amount treated as expenses of management shall not include any amount in respect of expenses referable to general annuity business or pension business; and

(e) the amount of profits from which expenses of management may be deducted for any accounting period shall not exceed the net income and gains of that accounting period referable to basic life assurance business;

and for this purpose "net income and gains" means income and gains after deducting any reliefs or exemptions which fall to be applied before taking account of this section. "

F16(3) . . . . . .

(4) In consequence of the amendment made by subsection (2) above, section 436(3)(b) of the Taxes Act 1988 (no deduction of expenses of management in certain cases) shall cease to have effect.

(5) This section has effect with respect to accounting periods beginning on or after 1st January 1990; and, in relation to a straddling period, sections75, 76 and 436 of the Taxes Act 1988—

(a) shall have effect in relation to the 1989 component period without regard to the amendments made by subsections (2) to (4) above; and

(b) shall have effect in relation to the 1990 component period as amended by those subsections.

(6) If, for the 1989 component period, there is an amount of expenses of management available to be carried forward to the 1990 component period under section 75(3)(a) of the Taxes Act 1988 (as applied by section 76thereof),—

(a) that amount shall form a pool to which the following provisions of this section shall apply and to which section 75(3)(b) of that Act (in this subsection referred to as "the carry-forward provision")shall apply only to the extent specified in paragraph (c) below;

(b) if, for the 1990 component period or any subsequent accounting period, the amount which (disregarding the pool) may be deducted in respect of expenses of management is less than the amount of the profits from which, disregarding section 76(1)(e) of that Act (as set out in subsection (2) above), the expenses of management are deductible, paragraph (c) below shall apply for that period; and in that paragraph the difference between the amount which maybe so deducted and that amount of profits is referred to as "the potential deficiency" for the period;

(c) where this paragraph applies for an accounting period (including the 1990 component period) the carry-forward provision shall be taken to have had effect to carry forward to the accounting period (as if disbursed as expenses for that period) so much of the pool as does not exceed the potential deficiency for the period and is permitted under section 76(2) of the Taxes Act 1988; and the amount of the pool shall be reduced accordingly.

(7) In the case of a company which has an accounting period beginning on 1stJanuary 1990, subsection (6) above shall apply as if—

(a) any reference therein to the 1989 component period were a reference to the accounting period ending on 31st December 1989; and

(b) any reference therein to the 1990 component period were a reference to the accounting period beginning on 1st January 1990.

Textual Amendments

F16 S. 87(3) repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt.V**.

88 Corporation tax: policy holders' fraction of profits.

(1) Subject to subsection (2) below, in the case of a company carrying on life assurance business, the rate of corporation tax chargeable for any financial year on

[F17(a) the policy holders' share of the relevant profits for any accounting period, or

(b) where the business is mutual business, the whole of those profits,

shall**]** be deemed to be the rate at which income tax at the basic rate is charged for the year of assessment which begins on 6th April in the financial year concerned.

(2) Subsection (1) above does not apply in relation to profits charged under Case I of Schedule D.

(3) For the purposes of subsection (1) above, the relevant profits of acompany for an accounting period are the total profits of its life assurancebusiness, less any deduction due under section 76 of the Taxes Act 1988, butbefore allowing any relief under Chapter II or Chapter IV of Part X of thatAct.

(4) In determining for the purposes of section 13 of the Taxes Act 1988 (small companies' relief) the profits and basic profits (within the meaning of that section) of an accounting period of a company carrying on life assurance business, the policy holders' **[**F18share**]** of the company's relevant profits for that period **[**F19, or where the business is mutual business the whole of those profits,**]** shall be left out of account.

(5) This section has effect with respect to the profits of a company for accounting periods beginning on or after 1st January 1990 (including the 1990 component period); and, for this purpose, the profits of the 1990 component period shall be taken to be that portion of the profits of the straddling period which the length of the 1990 component period bears to the length of the straddling period.

Textual Amendments

F17 Finance Act 1990 (c. 29), **s. 45(1)(10)**—*deemedalways to have had effect. Previously* "the policy holders' fractionof its relevant profits for any accounting period shall"

F18 Finance Act 1990 (c. 29), **s. 45(2)(10)**—*deemedalways to have had effect. Previously* "fraction"

F19 Finance Act 1990 (c. 29), **s. 45(2)(10)**—*deemedalways to have had effect*

VALID FROM 29/04/1996

[F20 88A Lower corporation tax rate on certain insurance company profits.

(1) Subject to subsection (2) below, in the case of a company carrying on basic life assurance and general annuity business, the rate of corporation tax chargeable for any financial year on so much of the company's BLAGAB profits for any accounting period as represents the company's lower rate income for the period shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned.

(2) Subsection (1) above does not apply in relation to profits charged under Case I of Schedule D.

(3) In this section, references to a company's lower rate income for any accounting period are references to so much of the income and gains of its basic life assurance and general annuity business for the period as consists in income of any of the following descriptions—

(a) income falling within paragraph (a) of Case III of Schedule D, as that Case applies for the purposes of corporation tax;

(b) purchased life annuities to which section 656 of the Taxes Act 1988 applies or to which that section would apply but for section 657(2)(a) of that Act;

(c) any such dividends or other distributions of a company not resident in the United Kingdom as would be chargeable under Schedule F if the company were resident in the United Kingdom;

(d) so much of—

(i) any dividend distribution (within the meaning of section 468J of the Taxes Act 1988), or

(ii) any foreign income distribution (within the meaning of section 468K of that Act),

as is deemed by subsection (2) of section 468Q of that Act (or by that subsection as applied by section 468R(2) of that Act) to be an annual payment.

(4) Where for any period—

(a) an insurance company's basic life assurance and general annuity business is mutual business,

(b) the policy holders' share of the company's relevant profits is equal to all those profits, or

(c) the policy holders' share of the company's relevant profits is more than the company's BLAGAB profits,

the amount to be taken for the purposes of this section as the amount of the company's BLAGAB profits for that period representing its lower rate income for that period shall be the amount equal to the applicable proportion of its BLAGAB profits.

(5) Where subsection (4) above does not apply in the case of an insurance company for any period, the amount to be taken for the purposes of this section as the amount of the company's BLAGAB profits for the period representing its lower rate income for that period shall be the amount produced by multiplying the following, that is to say—

(a) the applicable proportion of those profits; and

(b) the fraction given by dividing the policy holders' share of the relevant profits of the company for the period by its BLAGAB profits for that period.

(6) For the purposes of this section the applicable proportion of a company's BLAGAB profits for any period is the amount which bears the same proportion to those profits as the aggregate amount of the company's lower rate income for that period bears to the total income and gains for that period of the company's basic life assurance and general annuity business.

(7) For the purposes of this section, the BLAGAB profits of a company for an accounting period are the income and gains of the company's basic life assurance and general annuity business reduced by the aggregate amount of—

(a) any non-trading deficit on the company's loan relationships,

(b) expenses of management falling to be deducted under section 76 of the Taxes Act 1988, and

(c) charges on income,

so far as referable to the company's basic life assurance and general annuity business.

(8) Section 88(3) above applies for the purposes of this section as it applies for the purposes of section 88(1) above.**]**

Textual Amendments

F20 S. 88A inserted (29.4.1996 with effect for the financial year 1996 and subsequent financial years) by 1996 c. 8, s. 73, **Sch. 6 paras. 26(2)(4)**

Modifications etc. (not altering text)

C35 S. 88A modified (*retrospective* to 1.1.1996) by S.I. 1997/473, **regs. 1(2)**, 40

[F21 89 Policy holders' share of profits.

(1) The references in section 88 above to the policy holders' share of the relevant profits for an accounting period of a company carrying on life assurance business are references to the amount arrived at by deducting from those profits the Case I profits

of the company for the period in respect ofthe business, reduced in accordance with subsection (2) below.

(2) For the purposes of subsection (1) above, the Case I profits for a period shall be reduced by—

(a) the amount, so far as unrelieved, of any franked investment income arisingin the period as respects which the company has made an election under section438(6) of the Taxes Act 1988, and

(b) the shareholders' share of any other unrelieved franked investment income arising in the period from investments held in connection with the business.

(3) For the purposes of those section "the shareholders' share" in relation to any income is so much of the income as is represented by the fraction

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

where—

A is an amount equal to the Case I profits of the company for the period in question in respect of its life assurance business, and

B is an amount equal to the excess of the company's relevant non-premium income and relevant gains over its relevant expenses and relevant interest for the period.

(4) Where there is no such excess as is mentioned in subsection (3) above, or where the Case I profits are greater than any excess, the whole of the income shall be the shareholders' share; and (subject to that) where there are no Case I profits, none of the income shall be the shareholders' share.

(5) In subsection (3) above the references to the relevant non-premium income, relevant gains, relevant expenses and relevant interest of a company for an accounting period are references respectively to the following items as brought into account for the period, so far as referable to the company's life assurance business,—

(a) the company's investment income from the assets of its long-term businessfund together with its other income, apart from premiums;

(b) any increase in the value (whether realised or not) of those assets;

(c) expenses payable by the company;

(d) interest payable by the company;

and if for any period there is a reduction in the value referred to in paragraph (b) above (as brought into account for the period), that reduction shall be taken into account as an expense of the period.

(6) Except in so far as regulations made by the Treasury otherwise provide, in this section "brought into account" means brought into account in the revenue account prepared for the purposes of the Insurance Comanies Act 1982; and where the company's period of account does not coincide with the accounting period, any reference to an amount brought into accoun tfor the accounting period is a reference to the corresponding amount brought into account for the period of account in which the accounting period is comprised, proportionately reduced to reflect the length of the accounting period as compared with the length of the period of account.

(7) In this section "Case I profits" means profits computedin accordance with the provisions of the Taxes Act 1988 applicable to Case Iof Schedule D.

(8) For the purposes of this section franked investment income is unrelievedif—

(a) it has not been excluded from charge to tax by virtue of any provision,

(b) no tax credit comprised in it has been paid, and

(c) no relief has been allowed agaist it by deduction of set-off**]**.

Textual Amendments

F21 S. 89 substituted retrospectively by Finance Act 1990 (c. 29) {s. 45(3)}

Modifications etc. (not altering text)

C36 S. 89 amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by 1993 c. 34, **s. 78(6)(11)**

C37 S. 89(8) amended (27.7.1993) by 1993 c. 34, **s. 78(7)**

VALID FROM 27/07/1993

[F22 89A Modification of sections 83 and 89 in relation to overseas life insurance companies.

Schedule 8A to this Act (which makes modifications of sections 83 and 89 in relation to overseas life insurance companies) shall have effect.**]**

Textual Amendments

F22 S. 89A inserted (27.7.1993) by 1993 c. 34, **s. 101(1)**

90 Life policies etc. held by companies.

Schedule 9 to this Act (which imposes tax on certain benefits relating to life policies, life annuities and capital redemption policies held by companies, and makes related provision) shall have effect.

Underwriters

91 Premiums trust funds: stock lending.

(1) In section 725 of the Taxes Act 1988 (Lloyd's underwriters) the following subsections shall be inserted after subsection (9)—

"(10) Subsection (11) below applies where the following state of affairs exists at the beginning of 1st January of any year or the end of 31st December of any year—

(a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2),

(b) the transfer was made to enable another person to fulfil a contract or to make a transfer,

(c) securities have not been transferred in return, and

(d) section 129(3) applies to the transfer made by the trustees.

(11) The securities transferred by the trustees shall be treated for thepurposes of subsections (1) to (6) above as if they formed part of thepremiums trust fund at the beginning of 1st January concerned or the end of31st December concerned (as the case may be)."

(2) In section 142A of the [M12]Capital Gains Tax Act 1979(assets in premiums trust fund) the following subsections shall be insertedafter subsection (4)—

"(4A) Subsection (4B) below applies where the following state of affairs existsat the beginning of an accounting period or the end of an accountingperiod—

(a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2) of the TaxesAct 1988 (stock lending),

(b) the transfer was made to enable another person to fulfil a contract or to make a transfer,

(c) securities have not been transferred in return, and

(d) the transfer made by the trustees constitutes a disposal which by virtue of section 149B(9) below is to be disregarded as there mentioned.

(4B) The securities transferred by the trustees shall be treated for th epurposes of subsection (3) above as if they formed part of the premiums trust fund at the beginning concerned or the end concerned (as the case may be)."

(3) This section applies where the transfer by the trustees of a premiums trust fund is made after the date specified as mentioned in section 129(6) of the Taxes Act 1988.

Marginal Citations

M12 1979 c. 14.

92 Regulations about underwriters etc.

(1) In section 451(1A) of the Taxes Act 1988 (regulations about underwriters)for the words from "with respect to" to the end there shall be substituted the words "with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year."

(2) The following subsection shall be inserted after section 451(1A) of that Act—

"(1B) But the regulations may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made."

(3) In section 142A of the [M13]Capital Gains Tax Act 1979(regulations about premiums trust funds) subsection (5)(c) shall be omitted and the following subsections shall be inserted after subsection (5)—

"(6) Regulations under subsection (5) above may make provision with respect toany year or years of assessment; and the year (or any of the years) may be

the one in which the regulations are made or any year falling before or after thatyear.

(7) But the regulations may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made."

(4) Subsection (5) below applies in the case of any provision of the Tax Acts,the [M14]Taxes Management Act 1970, the Capital Gains Tax Act1979, or any other enactment relating to capital gains tax, which imposes atime limit for making a claim or an election or an application.

(5) The Board may by regulations provide that where the claim or election or application falls to be made by an underwriting member of Lloyd's or his spouse (or both) the provision shall have effect as if it imposed such longertime limit as is specified in the regulations.

(6) Regulations under subsection (5) above—

(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons;

(b) may make different provision for different provisions or different purposes.

(7) Regulations under subsection (5) above may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year.

Marginal Citations

M13 1979 c. 14.

M14 1970 c. 9.

Securities

93 Deep discount securities: amendments.

Schedule 10 to this Act (which amends Schedule 4 to the Taxes Act 1988) shall have effect.

94 Deep gain securities.

Schedule 11 to this Act (which contains provisions about securities capable of yielding a deep gain) shall have effect.

95 Treasury securities issued at a discount.

(1) Section 126 of the Taxes Act 1988 (tax not to be charged on certain securities in respect of discount under Case III of Schedule D) shall be amended as mentioned in subsections (2) and (3) below.

(2) In subsection (2) (the securities affected) for the words "except Treasury bills" there shall be substituted the words "except—

(a) Treasury bills,

(b) relevant deep discount securities, and

(c) deep gain securities."

(3) The following subsection shall be inserted after subsection (2)—

"(3) For the purposes of subsection (2) above—

(a) a relevant deep discount security is a security falling within paragraph1(1)(dd) of Schedule 4 to this Act, and

(b) a deep gain security is a security which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989."

(4) The preceding provisions of this section shall apply—

(a) in the case of a deep discount security, where there is a disposal (within the meaning of Schedule 4 to the Taxes Act 1988) on or after 14th March 1989;

(b) in the case of a deep gain security, where there is a transfer within the meaning of Schedule 11 to this Act, or a redemption, on or after 14th March1989.

(5) Subsection (7) below applies where—

(a) by virtue of paragraph 19(2) of Schedule 4 to the Taxes Act 1988, a security falls to be treated as a deep discount security as there mentioned, and

(b) after the time mentioned in paragraph 19(1)(d) of that Schedule there is a disposal (within the meaning of that Schedule) of the security.

(6) Subsection (7) below also applies where—

(a) by virtue of paragraph 20(2) of Schedule 11 to this Act, a security falls to be treated as a deep gain security as there mentioned, and

(b) after the time mentioned in paragraph 20(1)(d) of that Schedule there is a transfer (within the meaning of that Schedule) or a redemption of the security.

(7) In a case where this subsection applies, section 126 of the Taxes Act 1988 shall not apply in the case of the disposal, transfer or redemption (as the case may be).

96 Securities: miscellaneous.

(1) In section 452(8) of the Taxes Act 1988 (special reserve funds) for the words from "In paragraph (a) above" to the end there shall be substituted—

"In paragraph (a) above "income" includes—

(a) annual profits or gains chargeable to tax by virtue of section 714(2) or716(3),

(b) amounts treated as income chargeable to tax by virtue of paragraph 4 of Schedule 4, and

(c) amounts treated as income chargeable to tax by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989."

(2) In section 687 of the Taxes Act 1988 (payments under discretionary trusts) the following shall be inserted after subsection (3)(g)—

"(h) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 4 of Schedule 4 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 17 of that Schedule;

(i) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 11 of that Schedule;".

(3) The following subsections shall be inserted at the end of section 132A ofthe [M15]Capital Gains Tax Act 1979 (deep discountsecurities)—

"(5) Where by virtue of paragraph 18(3) of Schedule 4 to the Taxes Act 1988 trustees are deemed for the purposes of that Schedule to dispose of a securityat a particular time—

(a) they shall be deemed to dispose of the security at that time for the purposes of this Act, and

(b) the disposal deemed by paragraph (a) above shall be deemed to be at the market value of the security.

(6) Where by virtue of paragraph 18(4) of Schedule 4 to the Taxes Act 1988 trustees are deemed for the purposes of that Schedule to acquire a security at a particular time—

(a) they shall be deemed to acquire the security at that time for the purposesof this Act, and

(b) the acquisition deemed by paragraph (a) above shall be deemed to be at the market value of the security."

(4) The new paragraphs (b) and (c) inserted by subsection (1) above, and subsection (2) above, shall apply—

(a) in the case of a deep discount security, where there is a disposal (within the meaning of Schedule 4 to the Taxes Act 1988) on or after 14th March 1989;

(b) in the case of a deep gain security, where there is a transfer within the meaning of Schedule 11 to this Act, or a redemption, on or after 14th March 1989.

Marginal Citations

M15 1979 c. 14.

Groups of companies

97 Set-off of ACT where companies remain in same group.

(1) In section 240 of the Taxes Act 1988 (set-off of company's ACT against subsidiary's liability to corporation tax) at the end of subsection (5) (set-off not to be made against subsidiary's liability to corporation tax for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company) there shall be added the words "unless throughout that period or part both companies were subsidiaries of a third company".

(2) This section shall have effect in relation to accounting periods ending on or after 14th March 1989.

98 Restriction on set-off of ACT.

(1) After section 245 of the Taxes Act 1988 there shall be inserted—

"**245A Restriction on application of section 240 in certain circumstances.**

(1) This section applies if—

(a) there is a change in the ownership of a company ("the relevant company");

(b) by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and

(c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of section 240 the surrendering company in relation to that amount.

(2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in anaccounting period beginning before the change of ownership shall be treatedunder section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(3) Subsections (4) and (5) of section 245 shall apply also for the purposes of this section and as if the reference in subsection (4) of section 245 to the period of three years mentioned in subsection (1)(a) of that section were a reference to the period mentioned in subsection (1)(c) above.

(4) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.

245B Restriction on set-off where asset transferred after change in ownership of company.

(1) Subsection (4) below applies if—

(a) there is a change in the ownership of a company ("the relevant company");

(b) any advance corporation tax paid by the relevant company in respect of distributions made by it in an accounting period beginning before the change is treated under section 239(4) as paid by it in respect of distributions made by it in an accounting period ending after the change;

(c) after the change the relevant company acquires an asset from another company in such circumstances that section 273(1) of the Taxes Act 1970 applies to the acquisition; and

(d) a chargeable gain accrues to the relevant company on the disposal of the asset within the period of three years beginning with the change of ownership.

(2) Subsection (1)(b) above shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(3) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(4) In relation to the accounting period in which the chargeable gain accrues to the relevant company ("the relevant period"), section 239 shall have effect as if the limit imposed by subsection (2) of that section on the amount of advance corporation tax to be set against the relevant company's liability to corporation tax were reduced by whichever is the lesser of—

(a) the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the relevant period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the chargeable gain, and

(b) the amount of surplus advance corporation tax in relation to the accounting period which by virtue of subsection (2) above is treated for the purposes of subsection (1)(b) above as ending with the change of ownership.

(5) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax."

(2) This section shall have effect where the change in the ownership of the relevant company occurs on or after 14th March 1989.

99 Dividends etc. paid by one member of a group to another.

(1) Section 247 of the Taxes Act 1988 (dividends etc. paid by one member of a group to another) shall be amended in accordance with this section.

(2) In subsection (1) for paragraph (b) there shall be substituted—

"(b) a trading or holding company which does not fall within subsection (1A)below and which is owned by a consortium the members of which include the receiving company,".

(3) After subsection (1) there shall be inserted—

"(1A) A company falls within this subsection if—

(a) it is a 75 per cent. subsidiary of any other company, or

(b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary."

(4) After subsection (8) there shall be inserted—

"(8A) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

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

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

(5) For subsection (9)(c) there shall be substituted—

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

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

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

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

and those companies are called the members of the consortium."

(6) After subsection (9) there shall be inserted—

"(9A) Schedule 18 shall apply for the purposes of subsections (8A) and (9)(c)above as it applies for the purposes of section 413(7)."

(7) This section shall have effect in relation to dividends and other sums paid on or after the day on which this Act is passed.

100 Change in ownership of company.

(1) Section 769 of the Taxes Act 1988 (which contains rules for determining whether for the purposes of sections 245 and 768 of that Act there is a change in the ownership of a company) shall be amended in accordance with this section.

(2) For subsection (6) there shall be substituted—

"(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

(a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;

(b) in a case falling within subsection (1)(b) above but not within subsection(1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and

(c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means—

(a) any ordinary share capital of another company, and

(b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(6B) Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary of another company ("theparent company") it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

(a) the parent company would be beneficially entitled to not less than 75 percent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to not less than 75 percent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7)."

(3) Subsection (7)(b) and (c) shall cease to have effect.

(4) This section shall have effect where the change of ownership of a company would be treated as occurring on or after 14th March 1989.

101 Treatment of convertible shares or securities for purposes relating togroup relief etc.

(1) Paragraph 1 of Schedule 18 to the Taxes Act 1988 (which containsdefinitions relating to group relief) shall be amended in accordance with thissection.

(2) For sub-paragraph (3)(b) there shall be substituted—

"(b) do not carry any right either to conversion into shares or securities ofany other description except—

(i) shares to which sub-paragraph (5A) below applies,

(ii) securities to which sub-paragraph (5B) below applies, or

(iii) shares or securities in the company's quoted parent company,

or to the acquisition of any additional shares or securities;".

(3) For sub-paragraph (5)(a) there shall be substituted—

"(a) which does not carry any right either to conversion into shares orsecurities of any other description except—

(i) shares to which sub-paragraph (5A) below applies,

(ii) securities to which sub-paragraph (5B) below applies, or

(iii) shares or securities in the company's quoted parent company,

or to the acquisition of any additional shares or securities;".

(4) After sub-paragraph (5) there shall be inserted—

"(5A) This sub-paragraph applies to any shares which—

(a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and

(b) do not carry any rights either to conversion into shares or securities ofany other description, except shares or securities in the company's quotedparent company, or to the acquisition of any additional shares or securities.

(5B) This sub-paragraph applies to any securities representing a loan of orincluding new consideration and—

(a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above,and

(b) which does not carry any such rights as are mentioned in sub-paragraph(5A)(b) above.

(5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company("the parent company") is another company's "quotedparent company" if and only if—

(a) the other company is a 75 per cent. subsidiary of the parent company,

(b) the parent company is not a 75 per cent. subsidiary of any company, and

(c) the parent company's ordinary shares (or, if its ordinary share capitalis divided into two or more classes, its ordinary shares of each class) arequoted on a recognised stock exchange or dealt in on the Unlisted SecuritiesMarket;

and in this sub-paragraph "ordinary shares" means sharesforming part of ordinary share capital.

(5D) In the application of sub-paragraphs (3) and (5) to (5B) above indetermining for the purposes of sub-paragraph (5C)(a) above who are the equityholders of the other company (and, accordingly, whether section 413(7)prevents the other company from being treated as a 75 per cent. subsidiary ofthe parent company for the purposes of sub-paragraph (5C)(a)), it shall beassumed that the parent company is for the purposes of sub-paragraphs (3) and(5) to (5B) above the other company's quoted parent company."

(5) In sub-paragraph (6) for the words "to (5)" there shall besubstituted the words "to (5D)".

(6) This section, so far as relating to Schedule 18 of the Taxes Act 1988 inits application (by virtue of section 138 below) for the purposes ofsubsections (1D) and (1E) of section 272 of the Taxes Act 1970, shall bedeemed to have come into force on 14th March 1989.

102 Surrender of company tax refund etc. within group.

(1) Subsection (2) below applies where—

(a) there falls to be made to a company ("the surrendering company")which is a member of a group throughout the appropriate period a tax refundrelating to an accounting period of the company ("the relevant accountingperiod"), and

(b) another company ("the recipient company") which is a member of thesame group throughout the appropriate period also has the relevant accountingperiod as an accounting period.

(2) Where this subsection applies the two companies may, at any time beforethe refund is made to the surrendering company, jointly give notice to theinspector in such form as the Board may require that subsection (4) below isto have effect in relation to the refund or to any part of the refundspecified in the notice.

(3) In subsection (1) above—

"appropriate period" means the period beginning with therelevant accounting period and ending on the day on which the notice undersubsection (2) above is given, and

"tax refund relating to an accounting period" means, inrelation to a company—

(a) a repayment of corporation tax paid by the company for the period,

(b) a repayment of income tax in respect of a payment received by the companyin the period, or

(c) a payment of the whole or part of the tax credit comprised in any frankedinvestment income received by the company in the period.

(4) Subject to subsection (6) below, where this subsection has effect inrelation to any refund or part of a refund—

(a) the recipient company shall be treated for all purposes of the Tax Actsas having paid on the relevant date an amount of corporation tax for therelevant accounting period equal to the amount of the refund or part, and

(b) there shall be treated for all those purposes as having been made to thesurrendering company on the relevant date a repayment of corporation tax orincome tax or a payment of tax credit (as the case may be) equal to the amountof the refund or part;

and where the refund is a repayment of corporation tax, any interestrelating to it which has been paid by the surrendering company shall betreated as having been paid by the recipient company.

(5) In subsection (4) above "relevant date", in relation toa refund, means—

(a) in so far as it consists of a repayment of corporation tax paid by thesurrendering company after the date on which it became due and payable undersection 10 of the Taxes Act 1988, the day on which it was paid by thatcompany, and

(b) otherwise, the date on which corporation tax for the relevant accountingperiod became due and payable.

(6) For the purpose of ascertaining the amount of any penalty to which therecipient company is liable under section 94(6) of the [M16]Taxes Management Act 1970, the corporation tax which the company istreated as having paid by subsection (4)(a) above shall be treated as paid onthe day on which the notice under subsection (2) above is given (and not onthe relevant date).

(7) A payment for a transferred tax refund—

(a) shall not be taken into account in computing profits or losses of eithercompany for corporation tax purposes, and

(b) shall not for any of the purposes of the Corporation Tax Acts be regardedas a distribution or a charge on income;

and in this subsection "a payment for a transferred taxrefund" means a payment made by the receiving company to thesurrendering company in pursuance of an agreement between them as respects thegiving of a notice under this section, being a payment not exceeding theamount of the refund in question.

(8) For the purposes of this section two companies are members of the samegroup if and only if they would be for the purposes of Chapter IV of Part Xof the Taxes Act 1988.

(9) This section shall not apply unless the relevant accounting period endsafter such day, not being earlier than 31st March 1992, as the Treasury mayby order made by statutory instrument appoint.

Marginal Citations
M16 1970 c.9.

Close companies

103 Repeal of apportionment provisions.

(1) Except as provided by subsection (2) below, Chapter III of Part XI of theTaxes Act 1988 (apportionment of undistributed income etc. of close companies)shall not have effect in relation to accounting periods beginning after 31stMarch 1989.

(2) Section 427(4) of the Taxes Act 1988 (which gives relief to an individualwhere income apportioned to him in an earlier accounting period of a closecompany is included in a distribution received by him in a later accountingperiod), and section 427(5) of, and Part I of Schedule 19 to, that Act so faras they relate to section 427(4), shall continue to have effect in any casewhere the subsequent distribution referred to in section 427(4) is made before1st April 1992.

104 Meaning of "close company".

(1) In section 414 of the Taxes Act 1988 for subsection (2) (further case inwhich a company is a close company for the purposes of the Tax Acts) thereshall be substituted—

"(2) Subject to section 415 and subsection (5) below, a company resident in theUnited Kingdom (but not falling within subsection (1)(b) above) is also aclose company if five or fewer participators, or participators who aredirectors, together possess or are entitled to acquire—

(a) such rights as would, in the event of the winding-up of the company("the relevant company") on the basis set out in subsection (2A) below,entitle them to receive the greater part of the assets of the relevant companywhich would then be available for distribution among the participators, or

(b) such rights as would in that event so entitle them if any rights which anyof them or any other person has as a loan creditor (in relation to therelevant company or any other company) were disregarded.

(2A) In the notional winding-up of the relevant company, the part of the assetsavailable for distribution among the participators which any person isentitled to receive is the aggregate of—

(a) any part of those assets which he would be entitled to receive in theevent of the winding-up of the company, and

(b) any part of those assets which he would be entitled to receive if—

(i) any other company which is a participator in the relevant company and isentitled to receive any assets in the notional winding-up were also wound upon the basis set out in this subsection, and

(ii) the part of the assets of the relevant company to which the other companyis entitled were distributed among the participators in the other company inproportion to their respective entitlement to the assets of the other companyavailable for distribution among the participators.

(2B) In the application of subsection (2A) above to the notional winding-up ofthe other company and to any further notional winding-up required by paragraph(b) of that subsection (or by any further application of that paragraph),references to "the relevant company" shall have effect as references tothe company concerned.

(2C) In ascertaining under subsection (2) above whether five or fewerparticipators, or participators who are directors, together possess or areentitled to acquire rights such as are mentioned in paragraph (a) or (b) ofthat subsection—

(a) a person shall be treated as a participator in or director of the relevantcompany if he is a participator in or director of any other company whichwould be entitled to receive assets in the notional winding-up of the relevantcompany on the basis set out in subsection (2A) above, and

(b) except in the application of subsection (2A) above, no account shall betaken of a participator which is a company unless the company possesses or isentitled to acquire the rights in a fiduciary or representative capacity.

(2D) Subsections (4) to (6) of section 416 apply for the purposes ofsubsections (2) and (2A) above as they apply for the purposes of subsection(2) of that section."

(2) Subsection (3) of that section shall cease to have effect.

(3) In subsection (5)(b) of that section for the words from "paragraph(c)" to "that paragraph" there shall be substituted the words "paragraph (a) of subsection (2) above or paragraph (c) of section 416(2)and it would not be a close company if the references in those paragraphs".

(4) This section shall be deemed to have come into force on 1st April 1989.

105 Small companies' rate not available to certain close companies.

(1) In section 13 of the Taxes Act 1988 (small companies' relief) insubsection (1) for the words "a company resident in the United Kingdom"there shall be substituted the words "a company which—

(a) is resident in the United Kingdom, and

(b) is not a close investment-holding company (as defined in section 13A) atthe end of that period,".

(2) After that section there shall be inserted the following section—

"**13A Close investment-holding companies.**

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

(2) A company ("the relevant company") complies with this subsection inany accounting period if throughout that period it exists wholly or mainly forany one or more of the following purposes—

(a) the purpose of carrying on a trade or trades on a commercial basis,

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) In this section—

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

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

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

(3) This section shall have effect in relation to accounting periods beginningafter 31st March 1989.

106 Restriction on payment of tax credits.

(1) In section 231 of the Taxes Act 1988 (tax credits for certain recipientsof qualifying distributions) in subsection (3) after the words "made and"there shall be inserted the words "subject to subsections (3A) to (3D)below" and after that subsection there shall be inserted—

"(3A) Subject to subsection (3B) below, where it appears to the inspector that,in any accounting period of a company at the end of which it is a closeinvestment-holding company—

(a) arrangements relating to the distribution of the profits of the companyexist or have existed the main purpose of which or one of the main purposesof which is to enable payments, or payments of a greater amount, to be madeto any one or more individuals under subsection (3) above in respect of suchan excess as is mentioned in that subsection, and

(b) by virtue of those arrangements, any eligible person—

(i) receives a qualifying distribution consisting of a payment made by thecompany on the redemption, repayment or purchase of its own shares, or

(ii) receives any other qualifying distribution in respect of shares in orsecurities of the company, where the amount or value of the distribution isgreater than might in all the circumstances have been expected but for thearrangements,

the entitlement of the eligible person to have paid to him undersubsection (3) above all or part of a tax credit in respect of anydistribution made by the company in the period shall be restricted to suchextent as appears to the inspector to be just and reasonable.

(3B) Subsection (3A) above does not apply in relation to a tax credit inrespect of a dividend paid by a company in any accounting period in respectof its ordinary share capital if—

(a) throughout the period, the company's ordinary share capital consisted ofonly one class of shares, and

(b) no person waived his entitlement to any dividend which would have becomepayable by the company in the period or failed to receive any

dividend whichhad become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

"arrangements" means arrangements of any kind whether inwriting or not,

"close investment-holding company" has the meaning given bysection 13A, and

"eligible person", in relation to a qualifying distribution,means an individual resident in the United Kingdom who would (apart fromsubsection (3A) above) be entitled to have paid to him under subsection (3)above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled tohave any excess of tax credit paid to him in a case where subsection (3A)above applies, tax credits shall be set against income tax in the order thatresults in the greatest payment in respect of the excess."

(2) This section shall have effect in relation to distributions made bycompanies in accounting periods beginning after 31st March 1989.

107 Close companies: consequential amendments.

Schedule 12 to this Act (in which Part I contains administrativeprovisions relating to close companies and Part II makes amendments connectedwith section 103 above) shall have effect.

Settlements etc.

108 Outright gifts etc. between husband and wife.

(1) Section 685 of the Taxes Act 1988 (provisions supplementary to sectionscharging settlor to tax in excess of basic rate on certain settlement income)shall be amended as follows.

(2) In subsection (3), after the word "above" there shall be inserted thewords "and subsection (4B) below".

(3) At the end of subsection (4) there shall be added the words ", butsubject to subsections (4A) and (4C) below".

(4) After subsection (4) there shall be inserted—

"(4A) References in section 683 to a settlement do not include references to anoutright gift by one spouse to the other of property from which income arisesunless—

(a) the gift does not carry a right to the whole of that income, or

(b) the property given is wholly or substantially a right to income.

(4B) For the purposes of subsection (4A) above a gift is not an outright giftif it is subject to conditions, or if the property given or any derivedproperty is or will or may become, in any circumstances whatsoever, payableto or applicable for the benefit of the donor.

(4C) References in section 683 to a settlement do not include references to theirrevocable allocation of pension rights by one spouse to the other inaccordance with the terms of a relevant statutory scheme (within the meaningof Chapter I of Part XIV)."

(5) This section shall have effect for the year 1990-91 and subsequent yearsof assessment.

109 Settlements where settlor retains interest in settled property.

(1) After section 674 of the Taxes Act 1988 there shall be inserted—

"**674A Other settlements where settlor retains interest in settled property.**

(1) Where, during the life of the settlor, income arising under a settlementis, under the settlement and in the events that occur, payable to orapplicable for the benefit of any person other than the settlor, then, unless,under the settlement and in those events, the income—

(a) consists of annual payments made under a partnership agreement to or forthe benefit of a former member, or the widow or dependants of a deceasedformer member, of the partnership, being payments made under a liabilityincurred for full consideration; or

(b) is of a kind excluded from subsection (1) of section 683 by subsection (6)or (9) of that section; or

(c) is income arising under a settlement made by one party to a marriage byway of provision for the other after the dissolution or annulment of themarriage, or while they are separated under an order of a court or under aseparation agreement or in such circumstances that the separation is likelyto be permanent, being income payable to or applicable for the benefit of thatother party; or

(d) is income from property of which the settlor has divested himselfabsolutely by the settlement; or

(e) consists of covenanted payments to charity (as defined by section 660(3));or

(f) is income which, by virtue of any provision of the Income Tax Acts otherthan this section, is to be treated for all the purposes of those Acts asincome of the settlor;

the income shall be treated for all the purposes of the Income Tax Actsas the income of the settlor and not as the income of any other person.

(2) Subsections (6) to (10) of section 683 shall apply in relation tosubsection (1) above as they apply in relation to subsection (1) of thatsection.

(3) Subsections (1), (2), (3) and (for the year 1990-91 and subsequent yearsof assessment) (4A) to (4C) of section 685 shall have effect for the purposesof this section as they have effect for the purposes of section 683, but withthe omission from subsections (1) and (2) of the words "in the case of asettlement made after 6th April 1965".

(4) For the year 1990-91 and subsequent years of assessment subsection (1) (a)above shall have effect with the insertion after the word "widow" of theword "widower".

(5) This section applies in relation to income—

(a) which arises on or after 14th March 1989 under a settlement made on orafter that day, or

(b) which arises on or after 6th April 1990 under a settlement made before14th March 1989, so far as it is payable to or applicable for the benefit ofthe settlor's husband or wife,

except income consisting of annual payments made under an obligationwhich is an existing obligation for the purposes of section 36(3) of theFinance Act 1988."

(2) In section 125(3) of the Taxes Act 1988, in paragraph (a), for the words "section 683(1)(a) or (c) or (6)" there shall be substituted the words "subsection (1)(a) or (c) of section 674A or 683 or subsection (6) ofsection 683 (including that subsection as it applies in relation to section674A(1))".

(3) In sections 675(1), (4) and (5) and 676(1)(a) of that Act, for the words "or 674" there shall be substituted the words "674 or 674A".

(4) In section 677(2)(c) of that Act, after "674" there shall be inserted "674A".

110 Residence of trustees.

(1) Where the trustees of a settlement include at least one who is notresident in the United Kingdom as well as at least one who is, then for allthe purposes of the Income Tax Acts—

(a) if the condition in subsection (2) below is satisfied, the trustee ortrustees not resident in the United Kingdom shall be treated as residentthere, and

(b) otherwise, the trustee or trustees resident in the United Kingdom shallbe treated as not resident there (but as resident outside the United Kingdom).

(2) The condition referred to in subsection (1) above is that the settlor or,where there is more than one, any of them is at any relevant time—

(a) resident in the United Kingdom,

(b) ordinarily resident there, or

(c) domiciled there.

(3) For the purposes of subsection (2) above the following are relevant timesin relation to a settlor—

(a) in the case of a settlement arising under a testamentary disposition ofthe settlor or on his intestacy, the time of his death, and

(b) in the case of any other settlement, the time or, where there is more thanone, each of the times when he has provided funds directly or indirectly forthe purposes of the settlement.

(4) For the purposes of this section "settlor", in relationto a settlement, includes any person who has provided or undertaken to providefunds directly or indirectly for the purposes of the settlement.

(5) In section 824(9) of the Taxes Act 1988 (repayment supplements), for thewords "or a United Kingdom trust (as defined in section 231)," thereshall be substituted the words "the trustees of a settlement".

(6) Subject to subsections (7) to (9) below, this section shall apply for theyear 1989-90 and subsequent years of assessment.

(7) For the purpose of determining the residence of trustees at any timeduring the year 1989-90, the condition in subsection (2) above shall beregarded as not having been satisfied if none of the trustees of thesettlement is resident in the United Kingdom at any time during the periodbeginning with 1st October 1989 and ending with 5th April 1990.

(8) This section shall not apply for any of the purposes of section 739 of theTaxes Act 1988 in relation to income payable before 15th June 1989, or for thepurposes of subsection (3) of that section in relation to income payable onor after that date if—

(a) the capital sum there referred to is received, or the right to receive itis acquired, before that date, and

(b) that sum is wholly repaid, or the right to it waived, before 1st October1989.

(9) This section shall not apply for any of the purposes of section 740 of theTaxes Act 1988 in relation to benefits received before 15th June 1989; and,in relation to benefits received on or after that date, "relevant income"for those purposes shall include income arising to trustees before 6th April1989 notwithstanding that one or more of them was not resident outside theUnited Kingdom, unless they have been charged to tax in respect of it.

111 Residence of personal representatives.

(1) Where the personal representatives of a deceased person include at leastone who is not resident in the United Kingdom as well as at least one who is,then for all the purposes of the Income Tax Acts—

(a) if the condition in subsection (2) below is satisfied, the personalrepresentative or representatives not resident in the United Kingdom shall betreated as resident there, and

(b) otherwise, the personal representative or representatives resident in theUnited Kingdom shall be treated as not resident there (but as resident outsidethe United Kingdom).

(2) The condition referred to in subsection (1) above is that the deceasedperson is at his death—

(a) resident in the United Kingdom,

(b) ordinarily resident there, or

(c) domiciled there.

(3) In this section "personal representatives" means—

(a) in relation to England and Wales, the deceased person's personalrepresentatives as defined by section 55 of the [M17]Administration of Estates Act 1925;

(b) in relation to Scotland, his executor or the judicial factor on hisestate;

(c) in relation to Northern Ireland, his personal representatives as definedby section 45(1) of the [M18]Administration of EstatesAct (Northern Ireland) 1955; and

(d) in relation to another country or territory, the persons having inrelation to him under its law any functions corresponding to the functions foradministration purposes of personal representatives under the law of Englandand Wales.

(4) In section 824(9) of the Taxes Act 1988 (repayment supplements), for thewords from "or, in" to "section 701)" there shall be substituted thewords "or personal representatives (within the meaning of section 111 of theFinance Act 1989)".

(5) Subject to subsections (6) to (8) below, this section shall apply for theyear 1989-90 and subsequent years of assessment.

(6) For the purpose of determining the residence of personal representativesat any time during the year 1989-90, the condition in subsection (2) aboveshall be regarded as not having been satisfied if none of the personalrepresentatives is resident in the United Kingdom at any time during theperiod beginning with 1st October 1989 and ending with 5th April 1990.

(7) This section shall not apply for any of the purposes of section 739 of theTaxes Act 1988 in relation to income payable before 15th June 1989, or for thepurposes of subsection (3) of that section in relation to income payable onor after that date if—

(a) the capital sum there referred to is received, or the right to receive itis acquired, before that date, and

(b) that sum is wholly repaid, or the right to it waived, before 1st October1989.

(8) This section shall not apply for any of the purposes of section 740 of theTaxes Act 1988 in relation to benefits received before 15th June 1989 and, inrelation to benefits received on or after that date, "relevant income"for those purposes shall include income arising to personal representativesbefore 6th April 1989 notwithstanding that one or more of them was notresident outside the United Kingdom, unless they have been charged to tax inrespect of it.

Marginal Citations

M17 1925 c.23.

M18 1955 c. 24 (N.I.).

Miscellaneous

112 Security: trades etc.

(1) This section applies in computing, for the purposes of Case I or Case IIof Schedule D, the profits or gains of a trade, profession or vocation carriedon by an individual or by a partnership of individuals.

(2) In a case where this section applies, nothing in section 74(a) or (b) ofthe Taxes Act 1988 (deductions limited by reference to purposes of trade etc.)shall prevent the deduction of a sum in respect of expenditure incurred inconnection with the provision for or use by the individual, or any of theindividuals, of a security asset or security service.

(3) Subsection (2) above shall not apply unless the asset or service isprovided or used to meet a threat which—

(a) is a special threat to the individual's personal physical security, and

(b) arises wholly or mainly by virtue of the particular trade, profession orvocation concerned.

(4) Subsection (2) above shall not apply unless the person incurring theexpenditure has as his sole object in doing so the meeting of that threat.

(5) Subsection (2) above shall not apply in the case of a service unless thebenefit resulting to the individual consists wholly or mainly of animprovement of his personal physical security.

(6) Subsection (2) above shall not apply in the case of an asset unless theperson incurring the expenditure intends the asset to be used solely toimprove personal physical security.

(7) But in a case where—

(a) apart from subsection (6) above, subsection (2) above would apply in thecase of an asset, and

(b) the person incurring the expenditure intends the asset to be used partlyto improve personal physical security,

subsection (2) shall nevertheless apply, but only as regards theappropriate proportion of the expenditure there mentioned.

(8) For the purposes of subsection (7) above the appropriate proportion of theexpenditure mentioned in subsection (2) above is such proportion of thatexpenditure as is attributable to the intention of the person incurring itthat the asset be used to improve personal physical security.

113 Security: trades etc. (supplementary).

(1) For the purposes of section 112 above—

(a) a security asset is an asset which improves personal security,

(b) a security service is a service which improves personal security,

(c) references to an asset do not include references to a car, a ship or anaircraft,

(d) references to an asset or service do not include references to a dwellingor grounds appurtenant to a dwelling, and

(e) references to an asset include references to equipment and a structure(such as a wall).

(2) If the person incurring the expenditure intends the asset to be usedsolely to improve personal physical security, but there is another use for theasset which is incidental to improving personal physical security, that otheruse shall be ignored in construing section 112(6) above.

(3) The fact that an asset or service improves the personal physical securityof any member of the family or household of the individual concerned, as wellas that of the individual, shall not prevent section 112(2) above fromapplying.

(4) For the purposes of section 112 above in its application to an asset, itis immaterial whether or not the asset becomes affixed to land (whetherconstituting a dwelling or otherwise).

(5) For the purposes of section 112 above in its application to an asset, itis immaterial whether or not the individual concerned is or becomes entitledto the property in the asset or (in the case of a fixture) an estate orinterest in the land concerned.

(6) Section 112 above applies where expenditure is incurred on or after 6thApril 1989.

Modifications etc. (not altering text)

C38 S. 113 applied (31.7.1998 with effect as mentioned in s. 38(2)(3) of 1998 c. 36) by 1988 c. 1, **s. 21A(2)** (as substituted by 1998 c. 36, s. 38(1), Sch. 5 Pt. I paras. 4, **73**)

114 Relief for pre-trading expenditure.

(1) In section 401(1) of the Taxes Act 1988 (which gives relief forexpenditure incurred by a person within three years before he begins to carryon a trade, profession or vocation), for the word "three" there shall besubstituted the word "five".

(2) This section shall have effect where the time when the person begins tocarry on the trade, profession or vocation falls after the end of March 1989.

115 Double taxation: tax credits.

(1) Where any arrangements having effect by virtue of section 788 of the TaxesAct 1988 provide —

(a) for persons who are resident outside the United Kingdom and who receivedistributions from companies resident in the United Kingdom to be entitled totax credits, and

(b) for the amount paid to such a person by way of tax credit to be determinedby reference to the amount to which an individual resident in the UnitedKingdom would have been entitled, subject to a deduction calculated byreference to the aggregate of the amount or value of the distribution and theamount of the tax credit paid,

the arrangements shall be construed as providing for that deduction tobe calculated by reference to the gross amount or value of the distributionand tax credit, without any allowance for the deduction itself.

(2) This section shall have effect in relation to payments made before thepassing of this Act as well as those made after that time, except that itshall not affect—

(a) the judgment of any court given before 25th October 1988, or

(b) the law to be applied in proceedings on appeal to the Court of Appeal orthe House of Lords where the judgment of the High Court or the Court ofSession which is in issue was given before that date.

116 Interest payments to Netherlands Antilles subsidiaries.

(1) A payment to which this section applies shall be treated for the purposesof—

(a) section 338 of the Taxes Act 1988 (payment of interest within section 124of that Act to be a charge on income), and

(b) section 349 of that Act (such a payment to be made gross),

as if it were a payment of interest within section 124 of that Act(quoted Eurobonds).

(2) This section applies to a payment of interest if—

(a) it is made on or after 1st April 1989 by a relevant United Kingdom companyto a relevant Netherlands Antilles subsidiary, and

(b) not later than 90 days after the payment is received by the subsidiary,it is applied by the subsidiary in paying interest on quoted Eurobonds issuedby it

before 26th July 1984 or in meeting expenses incurred in connection withthe issue of quoted Eurobonds so issued.

(3) In subsection (2) above—

(a) "relevant Netherlands Antilles subsidiary" means a companywhich—

(i) at the time when the quoted Eurobonds were issued was resident in theNetherlands Antilles (including Aruba) and was a 90 per cent. subsidiary ofa company resident in the United Kingdom, and

(ii) at the time when the payment is made is resident in the NetherlandsAntilles (but not Aruba) and is a 90 per cent. subsidiary of the relevantUnited Kingdom company; and

(b) "relevant United Kingdom company" means a company which isresident in the United Kingdom and which is not a 51 per cent. subsidiary ofa company not resident in the United Kingdom.

(4) For the purpose of determining whether a company is a relevant NetherlandsAntilles subsidiary, its residence (whether before 1st April 1989 or at anylater time) shall be ascertained in accordance with the terms of thearrangements made with the Government of the Kingdom of the Netherlands onbehalf of the Government of the Netherlands Antilles which had effect byvirtue of section 788 of the Taxes Act 1988 immediately before 1st April 1989.

(5) In this section "quoted Eurobond" has the same meaningas in section 124 of the Taxes Act 1988.

CHAPTER II

CAPITAL ALLOWANCES

117–120 . . . . . F23

Textual Amendments

F23 Ss. 117–120 repealed by Capital Allowance Act 1990 (c.1, SIF 63:1), s. 164(4)(5), **Sch. 2**

121 Miscellaneous amendments.

(1) Schedule 13 to this Act (which makes miscellaneous amendments of theenactments relating to capital allowances) shall have effect.

(2) That Schedule shall be construed as one with **[**F24The Capital Allownaces Act 1990.**]**

Textual Amendments

F24 Capital Allowances Act 1990 (c. 1, SIF 63:1), s. 164, **Sch.1 para. 10**.*Previously*
"Part I of the Capital Allowances Act 1968"

CHAPTER III

CAPITAL GAINS

Exemptions

122 Annual exempt amount for 1989-90.

For the year 1989-90 section 5 of the [M19]Capital GainsTax Act 1979 (annual exempt amount) shall have effect as if the amountspecified in subsection (1A) were £5,000; and accordingly subsection(1B) of that section (indexation) shall not apply for that year.

Marginal Citations
M19 1979 c. 14.

123 Increase of chattel exemption.

(1) In the following enactments, namely—
(a) section 128 of the [M20]Capital Gains Tax Act 1979 (chattelexemption by reference to consideration of £3,000),
(b) section 12(2)(b) of the [M21]Taxes Management Act 1970(information about assets acquired), and
(c) section 25(7) of that Act (information about assets disposed of),
for "£3,000", in each place where it occurs, there shall besubstituted "£6,000".

(2) This section applies to disposals on or after 6th April 1989 andaccordingly, in relation to subsection (1)(b) above, to assets acquired on orafter that date.

Marginal Citations
M20 1979 c. 14.
M21 1970 c. 9.

Gifts

124 Relief for gifts.

(1) Section 79 of the [M22]Finance Act 1980 (which givesgeneral relief for gifts and other disposals not at arm's length) shall ceaseto have effect.

(2) Schedule 14 to this Act (which extends relief for gifts of businessassets, provides relief for gifts on which inheritance tax is chargeable,gifts for political parties, gifts of property of historic interest etc. orworks of art and gifts to certain maintenance funds etc., and makes provisionfor payment of tax by instalments in the case of gifts where relief is notavailable) shall have effect.

(3) This section shall have effect in relation to disposals on or after 14thMarch 1989 (except that it shall not affect the operation of any enactment inrelation to such a

disposal in a case where the enactment operates inconsequence of relief having been given under section 79 of the Finance Act1980 in respect of a disposal made before that date).

Marginal Citations
M22 1980 c. 48.

125 Gifts to housing associations.

(1) The following section shall be inserted in the Capital Gains Tax Act 1979after section 146—

"**146A Gifts to housing associations.**

(1) Subsection (2) below shall apply where—
(a) a disposal of an estate or interest in land in the United Kingdom is madeto a registered housing association otherwise than under a bargain at arm'slength, and
(b) a claim for relief under this section is made by the transferor and theassociation.

(2) Section 29A(1) above (consideration deemed to be equal to market value)shall not apply; but if the disposal is by way of gift or for a considerationnot exceeding the sums allowable as a deduction under section 32 above,then—
(a) the disposal and acquisition shall be treated for the purposes of this Actas being made for such consideration as to secure that neither a gain nor aloss accrues on the disposal, and
(b) where, after the disposal, the estate or interest is disposed of by theassociation, its acquisition by the person making the earlier disposal shallbe treated for the purposes of this Act as the acquisition of the association.

(3) In this section "registered housing association" meansa registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981."

(2) This section shall apply to disposals made on or after 14th March 1989.

Non-residents etc.

126 Non-resident carrying on profession or vocation in the United Kingdom.

(1) For the year 1988-89, section 12 of the [M23]Capital GainsTax Act 1979 (non-resident with United Kingdom branch or agency) shall haveeffect with the insertion of the following subsection after subsection(2)—

"(2A) In the case of a disposal made on or after 14th March 1989, this sectionshall apply as if references to a trade included references to a professionor vocation, but not so as to make a person chargeable to capital gains taxby virtue of a profession or vocation which he ceased to carry on in theUnited Kingdom through a branch or agency before 14th March 1989."

(2) For the year 1989-90 and subsequent years of assessment section 12 of theCapital Gains Tax Act 1979 shall have effect with the insertion of thefollowing subsection after subsection (2)—

"(2A) This section shall apply as if references to a trade included referencesto a profession or vocation."

(3) Where immediately before 14th March 1989 a person is not resident and notordinarily resident in the United Kingdom but is carrying on a profession orvocation in the United Kingdom through a branch or agency, he shall be deemedfor all purposes of capital gains tax—

(a) to have disposed immediately before 14th March 1989 of every asset towhich subsection (4) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at the time of the deemed disposal.

(4) This subsection applies to any asset which was held by the personimmediately before 14th March 1989 and which at the beginning of 14th March1989 is a chargeable asset in relation to him by virtue of his carrying on theprofession or vocation.

(5) For the purposes of subsection (4) above an asset is at the beginning of14th March 1989 a chargeable asset in relation to the person if, were it tobe disposed of at that time, any chargeable gains accruing to him on thedisposal would be gains in respect of which he would be chargeable to capitalgains tax under section 12(1) of the Capital Gains Tax Act 1979.

(6) In the case of a person carrying on a profession or vocation in the UnitedKingdom through a branch or agency, the charge to capital gains tax undersection 12(1) of the Capital Gains Tax Act 1979 shall not apply in respect ofchargeable gains accruing on the disposal of assets only used in or for thepurposes of the profession or vocation before 14th March 1989 or only used orheld for the purposes of the branch or agency before that date.

Marginal Citations

M23 1979 c. 14.

127 Non-residents: deemed disposals.

(1) Where an asset ceases by virtue of becoming situated outside the UnitedKingdom to be a chargeable asset in relation to a person, he shall be deemedfor all purposes of the [M24]Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when it becamesituated outside the United Kingdom, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Subsection (1) above does not apply—

(a) where the asset becomes situated outside the United Kingdomcontemporaneously with the person there mentioned ceasing to carry on a tradein the United Kingdom through a branch or agency, or

(b) where the asset is an exploration or exploitation asset.

(3) Where an asset ceases to be a chargeable asset in relation to a person byvirtue of his ceasing to carry on a trade in the United Kingdom through abranch or agency, he shall be deemed for all purposes of the Capital Gains TaxAct 1979—

(a) to have disposed of the asset immediately before the time when he ceasedto carry on the trade in the United Kingdom through a branch or agency, and

(b) immediately to have reacquired it,

at its market value at that time.

[F25(3A) Subsection (3) above shall not apply to an asset by reason of a transferof the whole or part of the long term business of an insurance company toanother company if section 267 of the Taxes Act 1970 has effect in relationto the asset by virtue of section 267A of that Act.**]**

(4) Subsection (3) above does not apply to an asset which is a chargeableasset in relation to the person there mentioned at any time after he ceasesto carry on the trade in the United Kingdom through a branch or agency andbefore the end of the chargeable period in which he does so.

(5) In this section—

"exploration or exploitation asset" means an asset used inconnection with exploration or exploitation activities carried on in theUnited Kingdom or a designated area, and

"designated area" and "exploration or exploitationactivities" have the same meanings as in section 38 of the M25Finance Act 1973.

(6) For the purposes of this section an asset is at any time a chargeableasset in relation to a person if, were it to be disposed of at that time, anychargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gainstax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident withUnited Kingdom branch or agency), or

(b) would form part of his chargeable profits for corporation tax purposes byvirtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) Subsection (1) above shall apply where an asset ceases to be situated inthe United Kingdom on or after 14th March 1989.

(8) Subsection (3) above shall apply where a person ceases to carry on a tradein the United Kingdom through a branch or agency on or after 14th March 1989.

(9) This section shall apply as if references to a trade included referencesto a profession or vocation.

Textual Amendments

F25 S. 127(3A) inserted by Finance Act 1990 (c. 29, SIF 63:1),s. 48, Sch. 9 paras. 2, 7

Modifications etc. (not altering text)

C39 S. 127(3) excluded by Taxes Act 1970 (c. 10, SIF 63:1), **s.273A(2)(b)** (as inserted by Finance Act 1990 (c.29, SIF 63:1), **s. 70(1)(9)**)
s. 127(3) excluded (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), **s. 269A(4)(b)** as inserted (16.7.92 but deemed always to have had effect) by (Finance (No. 2) Act 1992 (c. 48), **s. 47**

Marginal Citations
M24 1979 c. 14.
M25 1973c. 51.

128 Non-residents: post-cessation disposals.

(1) For the year 1988-89, section 12 of the [M26]Capital GainsTax Act 1979 (non-resident with United Kingdom branch or agency) shall haveeffect with the insertion of the following subsection after subsection(1)—

"(1A) In the case of a disposal made on or after 14th March 1989, subsection (1)above only applies—

(a) if it is made at a time when the person is carrying on the trade in theUnited Kingdom through a branch or agency, or

(b) if he ceased to carry on the trade in the United Kingdom through a branchor agency before 14th March 1989."

(2) For the year 1989-90 and subsequent years of assessment, section 12 of theCapital Gains Tax Act 1979 shall have effect with the insertion of thefollowing subsection after subsection (1)—

"(1A) Subsection (1) above does not apply unless the disposal is made at a timewhen the person is carrying on the trade in the United Kingdom through abranch or agency."

Marginal Citations
M26 1979 c. 14.

129 Non-residents: roll-over relief.

(1) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall notapply in the case of a person if the old assets are chargeable assets inrelation to him at the time they are disposed of, unless the new assets arechargeable assets in relation to him immediately after the time they areacquired.

(2) Subsection (1) above shall not apply where—

(a) the person acquires the new assets after he has disposed of the oldassets, and

(b) immediately after the time they are acquired the person is resident orordinarily resident in the United Kingdom.

(3) Subsection (2) above shall not apply where immediately after the time thenew assets are acquired—

(a) the person is a dual resident, and

(b) the new assets are prescribed assets.

(4) This section shall apply where the disposal of the old assets or theacquisition of the new assets (or both) takes place on or after 14th March1989.

(5) But where the acquisition of the new assets takes place before 14th March1989 and the disposal of the old assets takes place on or after that date,this section shall not apply

if the disposal of the old assets takes placewithin twelve months of the acquisition of the new assets or such longerperiod as the Board may by notice in writing allow.

(6) For the purposes of this section an asset is at any time a chargeableasset in relation to a person if, were it to be disposed of at that time, anychargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gainstax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident withUnited Kingdom branch or agency), or

(b) would form part of his chargeable profits for corporation tax purposes byvirtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) In this section—

"dual resident" means a person who is resident or ordinarilyresident in the United Kingdom and falls to be regarded for the purposes ofany double taxation relief arrangements as resident in a territory outside theUnited Kingdom;

"double taxation relief arrangements" means arrangementshaving effect by virtue of section 788 of the Taxes Act 1988 (as extended tocapital gains tax by section 10 of the [M27]Capital Gains TaxAct 1979);

"prescribed asset", in relation to a dual resident, means anasset in respect of which, by virtue of the asset being of a descriptionspecified in any double taxation relief arrangements, he falls to be regardedfor the purposes of the arrangements as not liable in the United Kingdom totax on gains accruing to him on a disposal.

(8) In this section—

(a) "the old assets" and "the new assets" havethe same meanings as in section 115 of the Capital Gains Tax Act 1979,

(b) references to disposal of the old assets include references to disposalof an interest in them, and

(c) references to acquisition of the new assets include references toacquisition of an interest in them or to entering into an unconditionalcontract for the acquisition of them.

Marginal Citations

M27 1979 c. 14.

130 Exploration or exploitation assets: definition.

(1) In section 38 of the [M28]Finance Act 1973 (territorialextension) in subsection (3B) (definition of exploration or exploitation assetfor purposes of that section)—

(a) in paragraph (a) the words "within the period of two years endingat the date of the disposal" shall be omitted, and

(b) in paragraph (b) for the words ", at some time within the period of twoyears ending at the date of the disposal, has" there shall be substitutedthe words "has at some time".

(2) This section shall apply where assets are disposed of on or after 14thMarch 1989.

Marginal Citations
M28 1973 c. 51.

131 Exploration or exploitation assets: deemed disposals.

(1) Where an exploration or exploitation asset which is a mobile asset ceasesto be chargeable in relation to a person by virtue of ceasing to be dedicatedto an oil field in which he, or a person connected with him within the meaningof section 839 of the Taxes Act 1988, is or has been a participator, he shallbe deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when it ceasedto be so dedicated, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Where a person who is not resident and not ordinarily resident in theUnited Kingdom ceases to carry on a trade in the United Kingdom through abranch or agency, he shall be deemed for all purposes of the [M29]Capital Gains Tax Act 1979—

(a) to have disposed immediately before the time when he ceased to carry onthe trade in the United Kingdom through a branch or agency of every asset towhich subsection (3) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at that time.

(3) This subsection applies to any exploration or exploitation asset, otherthan a mobile asset, used in or for the purposes of the trade at or before thetime of the deemed disposal.

(4) A person shall not be deemed by subsection (2) above to have disposed ofan asset if, immediately after the time when he ceases to carry on the tradein the United Kingdom through a branch or agency, the asset is used in or forthe purposes of exploration or exploitation activities carried on by him inthe United Kingdom or a designated area.

(5) Where in a case to which subsection (4) above applies the person ceasesto use the asset in or for the purposes of exploration or exploitationactivities carried on by him in the United Kingdom or a designated area, heshall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when he ceasedto use it in or for the purposes of such activities, and

(b) immediately to have reacquired it,

at its market value at that time.

(6) For the purposes of this section an asset is at any time a chargeableasset in relation to a person if, were it to be disposed of at that time, anychargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gainstax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident withUnited Kingdom branch or agency), or

(b) would form part of his chargeable profits for corporation tax purposes byvirtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) In this section—

(a) "exploration or exploitation asset" means an asset used inconnection with exploration or exploitation activities carried on in theUnited Kingdom or a designated area;

(b) "designated area" and "exploration or exploitationactivities" have the same meanings as in section 38 of the [M30]Finance Act 1973; and

(c) the expressions "dedicated to an oil field" and "participator" shall be construed as if this section wereincluded in Part I of the [M31]Oil Taxation Act 1975.

(8) Subsection (1) above shall apply where an asset ceases to be dedicated asmentioned in that subsection on or after 14th March 1989.

(9) Subsection (2) above shall apply where a person ceases to carry on a tradein the United Kingdom through a branch or agency on or after 14th March 1989.

(10) Subsection (5) above shall apply where a person ceases to use an asset inor for the purposes of exploration or exploitation activities on or after 14thMarch 1989.

Marginal Citations

M29 1979 c.14.

M30 1973c. 51.

M31 1975 c. 22.

132 Dual resident companies: deemed disposal.

(1) For the purposes of this section, a company is a dual resident company ifit is resident in the United Kingdom and falls to be regarded for the purposesof any double taxation relief arrangements as resident in a territory outsidethe United Kingdom.

(2) Where an asset of a dual resident company becomes a prescribed asset, thecompany shall be deemed for all purposes of the [M32]CapitalGains Tax Act 1979—

(a) to have disposed of the asset immediately before the time at which itbecame a prescribed asset, and

(b) immediately to have reacquired it,

at its market value at that time.

(3) Subsection (2) above does not apply where the asset becomes a prescribedasset on the company becoming a company which falls to be regarded asmentioned in subsection (1) above.

(4) This section applies where an asset becomes a prescribed asset on or after14th March 1989.

(5) In this section—

"double taxation relief arrangements" means arrangementshaving effect by virtue of section 788 of the Taxes Act 1988 (as extended tocapital gains tax by section 10 of the [M33]Capital Gains TaxAct 1979);

"prescribed asset", in relation to a dual resident company,means an asset in respect of which, by virtue of the asset being of adescription specified in any double taxation relief arrangements, the companyfalls to be regarded for

the purposes of the arrangements as not liable in theUnited Kingdom to tax on gains accruing to it on a disposal.

Marginal Citations

M32 1979 c. 14.

M33 1979 c. 14.

133 Dual resident companies: roll-over relief.

(1) Where a company is a dual resident company at the time it disposes of theold assets and at the time it acquires the new assets, and the old assets arenot prescribed assets at the time of disposal, section 115 of the CapitalGains Tax Act 1979 (roll-over relief) shall not apply unless the new assetsare not prescribed assets immediately after the time of acquisition.

(2) This section shall apply where the disposal of the old assets or theacquisition of the new assets (or both) takes place on or after 14th March1989.

(3) But where the acquisition of the new assets takes place before 14th March1989 and the disposal of the old assets takes place on or after that date,this section shall not apply if the disposal takes place within twelve monthsof the acquisition or such longer period as the Board may by notice in writingallow.

(4) In this section—

"dual resident company" means a company which is resident inthe United Kingdom and falls to be regarded for the purposes of any doubletaxation relief arrangements as resident in a territory outside the UnitedKingdom;

"double taxation relief arrangements" means arrangementshaving effect by virtue of section 788 of the Taxes Act 1988 (as extended tocapital gains tax by section 10 of the [M34]Capital Gains TaxAct 1979);

"prescribed asset", in relation to a dual resident company,means an asset in respect of which, by virtue of the asset being of adescription specified in any double taxation relief arrangements, the companyfalls to be regarded for the purposes of the arrangements as not liable in theUnited Kingdom to tax on gains accruing to it on a disposal.

(5) In this section—

(a) "the old assets" and "the new assets" havethe same meanings as in section 115 of the Capital Gains Tax Act 1979,

(b) references to disposal of the old assets include references to disposalof an interest in them, and

(c) references to acquisition of the new assets include references toacquisition of an interest in them or to entering into an unconditionalcontract for the acquisition of them.

Marginal Citations

M34 1979 c. 14.

134 Non-payment of tax by non-resident companies.

(1) This section applies where—

(a) a chargeable gain has accrued to a company not resident in the UnitedKingdom (the taxpayer company) on the disposal of an asset on or after 14thMarch 1989,

(b) the gain forms part of its chargeable profits for corporation tax purposesby virtue of section 11(2)(b) of the Taxes Act 1988, and

(c) any of the corporation tax assessed on the company for the accountingperiod in which the gain accrued is not paid within six months from the timewhen it becomes payable.

(2) The Board may, at any time before the end of the period of three yearsbeginning with the time when the amount of corporation tax for the accountingperiod in which the chargeable gain accrued is finally determined, serve onany person to whom subsection (4) below applies a notice—

(a) stating the amount which remains unpaid of the corporation tax assessedon the taxpayer company for the accounting period in which the gain accruedand the date when the tax became payable, and

(b) requiring that person to pay the relevant amount within thirty days of theservice of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesserof—

(a) the amount which remains unpaid of the corporation tax assessed on thetaxpayer company for the accounting period in which the gain accrued, and

(b) an amount equal to corporation tax on the amount of the chargeable gainat the rate in force when the gain accrued.

(4) This subsection applies to the following persons—

(a) any company which is, or within the relevant period was, a member of thesame group as the taxpayer company, and

(b) any person who is, or within the relevant period was, a controllingdirector of the taxpayer company or of a company which has, or within thatperiod had, control over the taxpayer company.

(5) Any amount which a person is required to pay by a notice under thissection may be recovered from him as if it were tax due and duly demanded ofhim; and he may recover any such amount paid by him from the taxpayer company.

(6) A payment in pursuance of a notice under this section shall not be allowedas a deduction in computing any income, profits or losses for any taxpurposes.

(7) In this section—

"director", in relation to a company, has the meaning givenby subsection (6) of section 168 of the Taxes Act 1988 (read with subsection(9) of that section) and includes any person falling within subsection (5) ofsection 417 of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means adirector of the company who has control of it (construing control inaccordance with section 416 of the Taxes Act 1988);

"group" has the meaning which would be given by section 272of the Taxes Act 1970 if in that section references to residence in the UnitedKingdom were

omitted and for references to 75 per cent. subsidiaries therewere substituted references to 51 per cent. subsidiaries.

(8) In this section "the relevant period" means—

(a) where the time when the chargeable gain accrues is less than twelve monthsafter 14th March 1989, the period beginning with that date and ending withthat time;

(b) in any other case, the period of twelve months ending with that time.

Value shifting and groups of companies

135 Value shifting.

(1) In section 26 of the [M35]Capital Gains Tax Act 1979 (valueshifting: further provisions) in subsection (1)(a) (schemes whereby value ofthe asset disposed of is materially reduced) after the words "the asset"there shall be inserted the words "or a relevant asset" and at the endof that subsection there shall be inserted—

"(1A) For the purposes of this section, where the asset disposed of by a company("the disposing company") consists of shares in, or securities of,another company, another asset is a relevant asset if, at the time of thedisposal, it is owned by a company associated with the disposing company; butno account shall be taken of any reduction in the value of a relevant assetexcept in a case where—

(a) during the period beginning with the reduction in value and endingimmediately before the disposal by the disposing company, there is no disposalof the asset to any person, other than a disposal falling within section273(1) of the Taxes Act 1970 (transfers within a group: no gain/no loss),

(b) no disposal of the asset is treated as having occurred during that periodby virtue of section 278 of the Taxes Act 1970 (company ceasing to be memberof group), and

(c) if the reduction had not taken place but any consideration given for therelevant asset and any other material circumstances (including anyconsideration given before the disposal for the asset disposed of) wereunchanged, the value of the asset disposed of would, at the time of thedisposal, have been materially greater;

and in this subsection "securities" has the same meaningas in section 82 below."

(2) For subsection (7) of that section there shall be substituted—

"(7) References in this section, in relation to any disposal, to a reductionin the value of an asset, where the asset consists of shares owned by acompany in another company, shall be interpreted in accordance with sections26A to 26C below and, in those sections, the disposal, the asset and thosecompanies are referred to respectively as "the section 26disposal", "the principal asset", "the first company" and "the second company"."

(3) In subsection (8) of that section for the words "reference in subsection(1)(a)" there shall be substituted the words "references in subsections(1)(a) and (1A)".

(4) This section shall have effect in respect of any disposal of an asset onor after 14th March 1989.

Marginal Citations
M35 1979 c. 14.

136 Value shifting: reductions attributable to distributions within a group.

(1) After section 26 of the [M36]Capital Gains Tax Act 1979there shall be inserted—

"**26A Value shifting: distributions within a group followed by a disposal ofshares.**

(1) The references in section 26 above to a reduction in the value of anasset, in the case mentioned in subsection (7) of that section, do not includea reduction attributable to the payment of a dividend by the second companyat a time when it and the first company are associated, except to the extent(if any) that the dividend is attributable to chargeable profits of the secondcompany and, in such a case, the tax-free benefit shall be ascertained withoutregard to any part of the dividend that is not attributable to such profits.

(2) Subsections (3) to (11) below apply for the interpretation of subsection(1) above.

(3) Chargeable profits shall be ascertained as follows—

(a) the distributable profits of any company are chargeable profits of thatcompany to the extent that they are profits arising on a transaction caughtby this section, and

(b) where any company makes a distribution attributable wholly or partly tochargeable profits (including any profits that are chargeable profits byvirtue of this paragraph) to another company, the distributable profits of theother company, so far as they represent that distribution or so much of it aswas attributable to chargeable profits, are chargeable profits of the othercompany,

and for this purpose any loss or other amount to be set against theprofits of a company in determining the distributable profits shall be setfirst against profits other than the profits so arising or, as the case maybe, representing so much of the distribution as was attributable to chargeableprofits.

(4) The distributable profits of a company are such profits computed on acommercial basis as, after allowing for any provision properly made for tax,the company is empowered, assuming sufficient funds, to distribute to personsentitled to participate in the profits of the company.

(5) Profits of a company ("company A") are profits arising on atransaction caught by this section where each of the following threeconditions is satisfied.

(6) The first condition is that the transaction is—

(a) a disposal of an asset by company A to another company in circumstancessuch that company A and the other company are treated

as mentioned in section273(1) of the Taxes Act 1970 (transfers within a group: no gain/no loss), or

(b) an exchange, or a transaction treated for the purposes of section 85(2)and (3) below as an exchange, of shares in or debentures of a company held bycompany A for shares in or debentures of another company, being a companyassociated with company A immediately after the transaction, and is treatedby virtue of section 85(3) below as a reorganisation of share capital, or

(c) a revaluation of an asset in the accounting records of company A.

In the following conditions the "asset with enhancedvalue" means (subject to section 26C below), in the paragraph (a)case, the asset acquired by the person to whom the disposal is made, in theparagraph (b) case, the shares in or debentures of the other company and, inthe paragraph (c) case, the revalued asset.

(7) The second condition is that—

(a) during the period beginning with the transaction referred to in subsection(6) above and ending immediately before the section 26 disposal, there is nodisposal of the asset with enhanced value to any person, other than a disposalfalling within section 273(1) of the Taxes Act 1970, and

(b) no disposal of the asset with enhanced value is treated as having occurredduring that period by virtue of section 278 of the Taxes Act 1970 (companyceasing to be member of group).

(8) The third condition is that, immediately after the section 26 disposal,the asset with enhanced value is owned by a person other than the companymaking that disposal or a company associated with it.

(9) The conditions in subsections (6) to (8) above are not satisfied if—

(a) at the time of the transaction referred to in subsection (6) above,company A carries on a trade and a profit on a disposal of the asset withenhanced value would form part of the trading profits, or

(b) by reason of the nature of the asset with enhanced value, a disposal ofit could give rise neither to a chargeable gain nor to an allowable loss, or

(c) immediately before the section 26 disposal, the company owning the assetwith enhanced value carries on a trade and a profit on a disposal of the assetwould form part of the trading profits.

(10) The amount of chargeable profits of a company to be attributed to anydistribution made by the company at any time in respect of any class ofshares, securities or rights shall be ascertained by—

(a) determining the total of distributable profits, and the total ofchargeable profits, that remains after allowing for earlier distributions madein respect of that or any other class of shares, securities or rights, and fordistributions made at or to be made after that time in respect of otherclasses of shares, securities or rights, and

(b) attributing first to that distribution distributable profits other thanchargeable profits.

(11) The amount of chargeable profits of a company to be attributed to any partof a distribution made at any time to which a person is entitled by virtue ofany part of his holding of any class of shares, securities or rights, shallbe such proportion of the chargeable profits as are attributable undersubsection (10) above to the distributions made at that time in respect ofthat class as corresponds to that part of his holding.

26B Value shifting: disposals within a group followed by a disposal of shares.

(1) The references in section 26 above to a reduction in the value of anasset, in the case mentioned in subsection (7) of that section, do not includea reduction attributable to the disposal of any asset ("the underlyingasset") by the second company at a time when it and the first company areassociated, being a disposal falling within section 273(1) of the Taxes Act1970 (transfers within group: no gain/no loss), except in a case withinsubsection (2) below.

(2) A case is within this subsection if the amount or value of the actualconsideration for the disposal of the underlying asset—

(a) is less than the market value of the underlying asset, and

(b) is less than the cost of the underlying asset,

unless the disposal is effected for bona fide commercial reasons and doesnot form part of a scheme or arrangements of which the main purpose, or oneof the main purposes, is avoidance of liability to corporation tax.

(3) For the purposes of subsection (2) above, the cost of an asset owned bya company is the aggregate of—

(a) any capital expenditure incurred by the company in acquiring or providingthe asset, and

(b) any other capital expenditure incurred by the company in respect of theasset while owned by that company.

(4) For the purposes of this section, where the disposal of the underlyingasset is a part disposal, the reference in subsection (2)(a) above to themarket value of the underlying asset is to the market value of the assetacquired by the person to whom the disposal is made and the amounts to beattributed to the underlying asset under paragraphs (a) and (b) of subsection(3) above shall be reduced to the appropriate proportion of those amounts,that is—

(a) the proportion of capital expenditure in respect of the underlying assetproperly attributed in the accounting records of the company to the assetacquired by the person to whom the disposal is made, or

(b) where paragraph (a) above does not apply, such proportion as appears tothe inspector, or on appeal the Commissioners concerned, to be just andreasonable.

(5) Where by virtue of a distribution in the course of dissolving or windingup the second company the first company is treated as disposing of an interestin the principal asset, the exception mentioned in subsection (1) above doesnot apply.

26C Value shifting: supplementary.

(1) For the purposes of sections 26(1A) and 26A(7) to (9) above, subsections(2) to (6) below apply for the purpose of determining in the case of any asset("the original asset") whether it is subsequently disposed of or treatedas disposed of or owned or any other condition is satisfied in respect of it.

(2) References in sections 26(1A)(a) and (b) and 26A(7) to a disposal are toa disposal other than a part disposal.

(3) References to an asset are to the original asset or, where at a later timeone or more assets are treated by virtue of subsections (5) or (6) below asthe same as the original asset—

(a) if no disposal falling within paragraph (a) or (b) of section 26(1A) or,as the case may be, of 26A(7) has occurred, those references are to the assetso treated or, as the case may be, all the assets so treated, and

(b) in any other case, those references are to an asset or, as the case maybe, all the assets representing that part of the value of the original assetthat remains after allowing for earlier disposals falling within theparagraphs concerned,

references in this subsection to a disposal including a disposal whichwould fall within the paragraphs concerned but for subsection (2) above.

(4) Where by virtue of subsection (3) above those references are to two ormore assets—

(a) those assets shall be treated as if they were a single asset,

(b) any disposal of any one of them is to be treated as a part disposal, and

(c) the reference in section 26(1A) to the asset owned at the time of thedisposal by a company associated with the disposing company and the referencein section 26A(8) to the asset with enhanced value is to all or any of thoseassets.

(5) Where there is a part disposal of an asset, that asset and the assetacquired by the person to whom the disposal is made are to be treated as thesame.

(6) Where the value of an asset is derived from any other asset in theownership of the same or an associated company, in a case where assets havebeen merged or divided or have changed their nature or rights or interests inor over assets have been created or extinguished, the first asset is to betreated as the same as the second.

(7) For the purposes of section 26(1A) above, where account is to be takenunder that subsection of a reduction in the value of a relevant asset and atthe time of the disposal by the disposing company referred to in thatsubsection—

(a) references to the relevant asset are by virtue of this section referencesto two or more assets treated as a single asset, and

(b) one or more but not all of those assets are owned by a company associatedwith the disposing company,

the amount of the reduction in the value of the relevant asset to betaken into account by virtue of that subsection shall be reduced to suchamount as appears to the inspector, or on appeal to the Commissionersconcerned, to be just and reasonable.

(8) For the purposes of section 26A above, where—

(a) a dividend paid by the second company is attributable to chargeableprofits of that company, and

(b) the condition in subsection (7), (8) or (9)(c) of that section issatisfied by reference to an asset, or assets treated as a single asset,treated by virtue of subsection (3)(b) above as the same as the asset withenhanced value,

the amount of the reduction in value of the principal asset shall bereduced to such amount as appears to the inspector, or on appeal to theCommissioners concerned, to be just and reasonable.

(9) For the purposes of sections 26 to 26B above and this section, companiesare associated if they are members of the same group.

(10) Section 272(1) to (4) of the Taxes Act 1970 (groups of companies:definitions) applies for the purposes of sections 26 to 26B above and thissection as it applies for the purposes of that section."

(2) This section shall have effect in respect of any disposal of an asset onor after 14th March 1989, but—

(a) no account shall be taken by virtue of section 26A of the [M37]Capital Gains Tax Act 1979 of any reduction in the value of an assetattributable to the payment of a dividend unless it is paid on or after thatdate, and

(b) no account shall be taken by virtue of section 26B of that Act of areduction in the value of an asset attributable to the disposal of anotherasset unless the disposal took place on or after that date.

Marginal Citations

M36 1979 c. 14.

M37 1979 c.14.

137 Value shifting: transactions treated as a reorganisation of share capital.

(1) After section 26C of the Capital Gains Tax Act 1979 there shall beinserted—

"**26D Value shifting: transactions treated as a reorganisation of share capital.**

(1) Where—

(a) but for sections 78 and 85(3) below, section 26 above would have effectas respects the disposal by a company ("the disposing company") of anasset consisting of shares in or debentures of another company ("theoriginal holding") in exchange for shares in or debentures of a furthercompany which, immediately after the disposal, is not a member of the samegroup as the disposing company, and

(b) if section 26 above had effect as respects that disposal, any allowableloss or chargeable gain accruing on the disposal would be calculated as if theconsideration for the disposal were increased by an amount,

the disposing company shall be treated for the purposes of section 79(2)below as receiving, on the reorganisation of share capital that is treated asoccurring by virtue of section 85(3) below, that amount for the disposal ofthe original holding.

(2) For the purposes of subsection (1) above it shall be assumed that section86 below has effect generally for the purposes of this Act, and in thatsubsection "group" has the same meaning as in sections 26 to26C above."

(2) This section shall have effect where the reduction in value, by reason ofwhich the amount referred to in section 26D(1)(b) of the [M38]Capital Gains Tax Act 1979 falls to be calculated, occurred on orafter 14th March 1989.

Marginal Citations
M38 1979 c.14.

138 Groups of companies.

(1) In section 272 of the Taxes Act 1970 (groups of companies: definitions)in subsection (1), for paragraphs (b) and (c) there shall besubstituted—

"(b) subsections (1A) to (1D) below apply to determine whether companies forma group and, where they do, which is the principal company of the group;".

(2) After that subsection there shall be inserted—

"(1A) Subject to subsections (1B) to (1D) below—

(a) a company (referred to below in this Chapter as the "principalcompany of the group") and all its 75 per cent. subsidiaries form agroup and, if any of those subsidiaries have 75 per cent. subsidiaries, thegroup includes them and their 75 per cent. subsidiaries, and so on, but

(b) a group does not include any company (other than the principal company ofthe group) that is not an effective 51 per cent. subsidiary of the principalcompany of the group.

(1B) A company cannot be the principal company of a group if it is itself a 75per cent. subsidiary of another company.

(1C) Where a company ("the subsidiary") is a 75 per cent.subsidiary of another company but those companies are prevented from beingmembers of the same group by subsection (1A)(b) above, the subsidiary may,where the requirements of subsection (1A) above are satisfied, itself be theprincipal company of another group notwithstanding subsection (1B) aboveunless this subsection enables a further company to be the principal companyof a group of which the subsidiary would be a member.

(1D) A company cannot be a member of more than one group; but where, apart fromthis subsection, a company would be a member of two or more groups (theprincipal company of each group being referred to below as the "headof a group"), it is a member only of that group, if any, of which itwould be a

member under one of the following tests (applying earlier tests inpreference to later tests)—

(a) it is a member of the group it would be a member of if, in applyingsubsection (1A)(b) above, there were left out of account any amount to whicha head of a group is or would be beneficially entitled of any profitsavailable for distribution to equity holders of a head of another group or ofany assets of a head of another group available for distribution to its equityholders on a winding-up,

(b) it is a member of the group the head of which is beneficially entitled toa percentage of profits available for distribution to equity holders of thecompany that is greater than the percentage of those profits to which anyother head of a group is so entitled,

(c) it is a member of the group the head of which would be beneficiallyentitled to a percentage of any assets of the company available fordistribution to its equity holders on a winding-up that is greater than thepercentage of those assets to which any other head of a group would be soentitled,

(d) it is a member of the group the head of which owns directly or indirectlya percentage of the company's ordinary share capital that is greater than thepercentage of that capital owned directly or indirectly by any other head ofa group (interpreting this paragraph as if it were included in section838(1)(a) of the Taxes Act 1988).

(1E) For the purposes referred to in subsection (1) above, a company("the subsidiary") is an effective 51 per cent. subsidiaryof another company ("the parent") at any time if and only if—

(a) the parent is beneficially entitled to more than 50 per cent. of anyprofits available for distribution to equity holders of the subsidiary; and

(b) the parent would be beneficially entitled to more than 50 per cent. of anyassets of the subsidiary available for distribution to its equity holders ona winding-up.

(1F) Schedule 18 to the Taxes Act 1988 (group relief: equity holders andprofits or assets available for distribution) shall apply for the purposes ofsubsections (1D) and (1E) above as if the references to subsection (7), orsubsections (7) to (9), of section 413 of that Act were references tosubsections (1D) and (1E) above and as if, in paragraph 1(4), the words from "but" to the end and paragraph 7(1)(b) were omitted."

(3) In subsection (3) of that section for the words from "75 per cent.subsidiary of another company" to "is the principal company" thereshall be substituted the words "member of another group, the first group andthe other group shall be regarded as the same".

(4) In subsection (4) of that section—

(a) for the words "a company" there shall be substituted the words "amember of a group of companies", and

(b) for the words from "that company, or" to the end there shall besubstituted the words "that or any other company ceasing to be a member ofthe group".

(5) In section 278 of that Act (deemed disposal of certain assets held bycompany leaving group) after subsection (3A) there shall be inserted—

"(3B) Where, apart from subsection (3C) below, a company ceasing to be a memberof a group by reason only of the fact that the principal company of the groupbecomes a member of another group would be treated by virtue of subsection (3)above as selling an asset at any time, subsections (3C) to (3E) below shallapply.

(3C) The company in question shall not be treated as selling the asset at thattime; but if—

(a) within six years of that time the company in question ceases at any time("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the samegroup as that company, owns otherwise than as trading stock the asset orproperty to which a chargeable gain has been carried forward from the asseton a replacement of business assets,

the company in question shall be treated for all the purposes of theCapital Gains Tax Act 1979 as if, immediately after itsacquisition of the asset, it had sold and immediately reacquired the asset atthe value that, at the time of acquisition, was its market value.

(3D) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members ofthe other group referred to in subsection (3B) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or moreof those members.

(3E) Any chargeable gain or allowable loss accruing to the company on that saleshall be treated as accruing at the relevant time.

(3F) Where—

(a) by virtue of this section a company is treated as having sold an asset atany time, and

(b) if at that time the company had in fact sold the asset at market value atthat time, then, by virtue of section 26 of that Act, any allowable loss orchargeable gain accruing on the disposal would have been calculated as if theconsideration for the disposal were increased by an amount,

subsections (3) and (3C) above shall have effect as if the market valueat that time had been that amount greater."

(6) In section 97 of the [M39]Inheritance Tax Act 1984(transfers within group etc.)—

(a) for the words "principal member" and "principal member's",wherever appearing, there shall be substituted "principal company" and "principal company's" respectively,

(b) for subsection (2)(a) there shall be substituted—

"(a) section 272 of the Taxes Act 1970 (groups of companies: definitions)applies as for the purposes of sections 273 to 281 of that Act"and

(c) the words from "and in this section" in subsection (2)to the end shall be omitted.

(7) Subject to the following provisions, this section shall be deemed to havecome into force on 14th March 1989; but section 278(3E) of the Taxes Act 1970shall have effect

where the accounting period in which the company referredto in subsection (3B) of that section ceases to be a member of a group endsafter the day appointed for the purposes of paragraph 4 of Schedule 6 to the [M40]Finance (No. 2) Act 1987.

(8) Where—

(a) at the beginning of the commencement day a company ceases for the purposesof the group provisions to be a member of a group by reason only of thesubstitution for the old definition of the new definition, and

(b) in consequence of ceasing to be such a member the company would, apartfrom this subsection, be treated by virtue of section 278(3) of the Taxes Act1970 as selling an asset at any time,

the company in question shall not be treated as selling that asset atthat time unless the conditions in subsection (9) below become satisfied,assuming for that purpose that the old definition applies.

(9) Those conditions are—

(a) that for the purposes of section 278 of that Act the company in questionceases at any time ("the relevant time") to be a member of the groupreferred to in subsection (8)(a) above,

(b) that, at the relevant time, the company in question, or an associatedcompany also leaving that group at that time, owns otherwise than as tradingstock the asset or property to which a chargeable gain has been carriedforward from the asset on a replacement of business assets, and

(c) that the time of acquisition referred to in section 278(1) of that Actfell within the period of six years ending with the relevant time.

(10) Where, under any compromise or arrangement agreed to on any date before14th March 1989 in pursuance of section 425 of the [M41]Companies Act 1985 and sanctioned by the court, one company acquiresat any time, directly or indirectly, an interest in ordinary share capital ofanother company and immediately after that time—

(a) under the old definition the two companies are, by virtue of thatacquisition, members of a group for the purposes of the group provisions, but

(b) the second company is not an effective 51 per cent. subsidiary of thefirst company,

subsection (11) below applies; and in that subsection those companies andany other members of the group are referred to as "relevantcompanies".

(11) In respect of the period beginning with the time of acquisition and endingwith—

(a) the expiry of the six months beginning with the date of the agreement, or

(b) if earlier, the date when, under the old definition, the other companyceases for the purposes of the group provisions to be a member of the groupreferred to in subsection (10)(a) above,

the old definition shall apply in relation to the relevant companies forthe purposes of the group provisions and the commencement day in relation tothose companies is the day following the end of that period.

(12) In subsections (8) to (11) above—

"arrangement" has the same meaning as in section 425 of the [M42]Companies Act 1985,

"commencement day", subject to subsection (11) above, is 14thMarch 1989,

"effective 51 per cent. subsidiary" has the meaning given bysection 272(1E) of the Taxes Act 1970,

"group provisions" means sections 273 to 281 of that Act, and

"the new definition" means section 272 of that Act as amendedby this section and "the old definition" means that sectionas it had effect on 13th March 1989,

and section 278(4) of that Act shall apply for the purposes of thosesubsections.

Marginal Citations

M39 1984 c. 51.
M40 1987 c. 51.
M41 1985 c.6.
M42 1985 c. 6.

Miscellaneous

139 Corporate bonds.

(1) In relation to disposals on or after 14th March 1989 Chapter III of PartII of the [M43]Finance Act 1984 shall have effect subject tothe following provisions of this section (and, in relation to such disposals,those provisions shall be regarded as always having had effect).

(2) In subsection (2) of section 64 (which defines "corporatebond" for the purposes of that section and accordingly for thepurposes of certain other enactments including, by virtue of section 64(1) ofthe [M44]Capital Gains Tax Act 1979, that Act) paragraph (a)shall be omitted.

(3) After subsection (3) of section 64 there shall be inserted—

"(3A) For the purposes of this section "corporate bond" alsoincludes a security—

(a) which is not included in the definition in subsection (2) above, and

(b) which is a deep gain security for the purposes of Schedule 11 to theFinance Act 1989.

(3B) For the purposes of this section "corporate bond" alsoincludes a security—

(a) which is not included in the definition in subsection (2) above, and

(b) which, by virtue of paragraph 21(2) of Schedule 11 to the Finance Act1989, falls to be treated as a deep gain security as there mentioned.

(3C) For the purposes of this section "corporate bond" alsoincludes a security—

(a) which is not included in the definition in subsection (2) above, and

(b) which, by virtue of paragraph 22(2) of Schedule 11 to the Finance Act1989, falls to be treated as a deep gain security as there mentioned."

(4) After subsection (5) of section 64 there shall be inserted—

"(5A) Subject to subsection (6) below, for the purposes of this section andSchedule 13 to this Act a corporate bond which falls within subsection (3A)above is a qualifying corporate bond, whatever the date of its

issue; andsubsections (4) and (5) above shall not apply in the case of such a bond.

(5B) Subject to subsection (6) below, for the purposes of this section andSchedule 13 to this Act a corporate bond which falls within subsection (3B)above is a qualifying corporate bond as regards a disposal made after the timementioned in paragraph 21(1)(c) of Schedule 11 to the Finance Act 1989,whatever the date of its issue; and subsections (4) and (5) above shall notapply in the case of such a bond.

(5C) Subject to subsection (6) below, for the purposes of this section andSchedule 13 to this Act a corporate bond which falls within subsection (3C)above is a qualifying corporate bond as regards a disposal made after the timethe agreement mentioned in paragraph 22(1)(b) of Schedule 11 to the FinanceAct 1989 is made, whatever the date of its issue; and subsections (4) and (5)above shall not apply in the case of such a bond."

(5) In subsection (6) of section 64, after the words "this Act" thereshall be inserted the words "except in relation to a disposal by a personwho (at the time of the disposal) is not a member of the same group as thecompany which issued the security".

(6) In paragraph 10(2) of Schedule 13—

(a) after paragraph (b) there shall be inserted—

"(bb) section 267 of the Taxes Act (company reconstructions and amalgamations);or"and

(b) the word "not" shall be inserted after the words "previousdisposal".

Marginal Citations

M43 1984 c. 43.

M44 1979 c. 14.

140 Collective investment schemes.

(1) In this section—

"collective investment scheme" has the same meaning as in the [M45] Financial Services Act 1986, and

"participant" shall be construed with that Act.

(2) Subsection (3) below applies in the case of arrangements which constitutea collective investment scheme and under which—

(a) the contributions of the participants, and the profits or income out ofwhich payments are to be made to them, are pooled in relation to separateparts of the property in question, and

(b) the participants are entitled to exchange rights in one part for rightsin another.

(3) If a participant exchanges rights in one such for rights in anothersection 78 of the [M46] Capital Gains Tax Act 1979(reorganisations etc.) shall not prevent the exchange constituting a disposaland acquisition for the purposes of that Act.

(4) The reference in subsection (3) above to section 78 of that Act—

(a) includes a reference to that section as applied by section 82 of that Act(conversion of securities), but

(b) does not include a reference to section 78 as applied by section 85 ofthat Act (exchange of securities for those in another company).

(5) Subsection (3) above shall apply where rights are exchanged on or after14th March 1989.

(6) Section 78 of the [M47] Finance (No. 2) Act 1987 shallcease to have effect as regards any case where the question it mentions isdetermined in relation to a disposal made on or after 14th March 1989.

Marginal Citations

M45 1986 c. 60.
M46 1979 c. 14.
M47 1987 c. 51.

141 Re-basing to 1982 etc.

Schedule 15 to this Act (which makes further provision about charges etc.postponed from 31st March 1982 or before, assets held on that date and relatedmatters) shall have effect.

CHAPTER IV

MANAGEMENT

Information

142 Power to call for documents and information.

(1) Section 20 of the [M48] Taxes Management Act 1970 (power tocall for documents of taxpayer and others) shall be amended in accordance withsubsections (2) to (8) below.

(2) In subsection (1), for the words "a person" onwards there shall besubstituted the words "a person—

(a) to deliver to him such documents as are in the person's possession orpower and as (in the inspector's reasonable opinion) contain, or may contain,information relevant to—

(i) any tax liability to which the person is or may be subject, or

(ii) the amount of any such liability, or

(b) to furnish to him such particulars as the inspector may reasonably requireas being relevant to, or to the amount of, any such liability."

(3) In subsection (2), for the words "a person" onwards there shall besubstituted the words "a person

(a) to deliver to a named officer of the Board such documents as are in theperson's possession or power and as (in the Board's reasonable opinion)contain, or may contain, information relevant to—

(i) any tax liability to which the person is or may be subject, or

(ii) the amount of any such liability, or

(b) to furnish to a named officer of the Board such particulars as the Boardmay reasonably require as being relevant to, or to the amount of, any suchliability."

(4) In subsection (3)—

(a) for the words "of the persons who in relation to the taxpayer aresubject to this subsection" there shall be substituted the words "otherperson", and

(b) at the end there shall be added the words "; and the persons who may berequired to deliver or make available a document under this subsection includethe Director of Savings."

(5) Subsections (4) and (5) shall be omitted.

(6) In subsection (6)—

(a) for the words "under subsections (3) and (4)" there shall besubstituted the words "for the purposes of this section", and

(b) the words "and in relation" onwards shall be omitted.

(7) For subsection (8) there shall be substituted—

"(8) Subject to subsection (8A) below, a notice under subsection (3) aboveshall name the taxpayer with whose liability the inspector (or, where section20B(3) below applies, the Board is concerned."

(8) After subsection (8B) there shall be inserted—

"(8C) In this section references to documents do not include—

(a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or

(b) journalistic material (as defined in section 13 of that Act),

and references to particulars do not include particulars contained insuch personal records or journalistic material.

(8D) Subject to subsection (8C) above, references in this section to documentsand particulars are to those specified or described in the notice in question;and—

(a) the notice shall require documents to be delivered (or delivered or madeavailable), or particulars to be furnished, within such time (which, exceptin the case of a notice under subsection (2) above, shall not be less thanthirty days after the date of the notice) as may be specified in the notice;and

(b) the person to whom they are delivered, made available or furnished maytake copies of them or of extracts from them."

(9) In section 12(3) of the [M49] National Savings Bank Act1971, for the words "20(4)(b)" onwards there shall be substituted thewords "20(3) of that Act (requirement to deliver or make available documentsrelating to liability of a taxpayer)."

(10) This section shall apply with respect to notices given on or after the dayon which this Act is passed.

Marginal Citations
M48 1970 c. 9.
M49 1971 c. 29.

143 Power to call for papers of tax accountant.

(1) In section 20A of the [M50] Taxes Management Act 1970 (powerto call for papers of tax accountant) for the lasr sentence of subsection (1)there shall be substituted—

"(1A) The reference to documents in subsection (1) above does not include—

(a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or

(b) journalistic material (as defined in section 13 of that Act).

(1B) Subject to subsection (1A) above, the reference to documents in subsection(1) above is to those specified or described in the notice in question;and—

(a) the notice shall require documents to be delivered within such time (whichshall not be less than thirty days after the date of the notice) as may bespecified in the notice; and

(b) the inspector may take copies of them or of extracts from them."

(2) This section shall apply with respect to notices given on or after the dayon which this Act is passed.

Marginal Citations
M50 1970 c. 9.

144 Restrictions on powers under TMA ss.20 and 20A.

(1) Section 20B of the [M51] Taxes Management Act 1970(restrictions on powers under sections 20 and 20A) shall be amended asfollows.

(2) In subsection (1), after the word "question" there shall be insertedthe words ", or to furnish the particulars in question".

(3) After that subsection there shall be inserted—

"(1A) Subject to subsection (1B) below, where a notice is given to any personunder section 20(3) the inspector shall give a copy of the notice to thetaxpayer to whom it relates.

(1B) If, on an application by the inspector, a General or Special Commissionerso directs, a copy of a notice under section 20(3) need not be given to thetaxpayer to whom it relates; but such a direction shall not be given unlessthe Commissioner is satisfied that the inspector has reasonable grounds forsuspecting the taxpayer of fraud."

(4) In subsection (2), after the words "deliver documents", in the firstplace where they occur, there shall be inserted the words "or furnishparticulars".

(5) In subsection (5), for the words from "if" to "or company" thereshall be substituted the words "does not oblige a person".

(6) In subsection (7), the words from "to a person" to "daughter"shall be omitted.

(7) For subsection (9) there shall be substituted—

"(9) Subject to subsections (11) and (12) below, a notice under section 20(3)or (8A)—

(a) does not oblige a person who has been appointed as an auditor for thepurposes of any enactment to deliver or make available documents which are hisproperty and were created by him or on his behalf for or in connection withthe performance of his functions under that enactment, and

(b) does not oblige a tax adviser to deliver or make available documents whichare his property and consist of relevant communications.

(10) In subsections (9) above "relevant communications" meanscommunications between the tax adviser and —

(a) a person in relation to whose tax affairs he has been appointed, or

(b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any ofthose tax affairs; and in subsection (9) above and this subsection "tax adviser" means a person appointed to give advice aboutthe tax affairs of another person (whether appointed directly by that otherperson or by another tax adviser of his).

(11) Subject to subsection (13) below, subsection (9) above shall not haveeffect in relation to any document which contains information explaining anyinformation, return, accounts or other document which the person to whom thenotice is given has, as tax accountant, assisted any client of his inpreparing for, or delivering to, the inspector or the Board.

(12) Subject to subsection (13) below, in the case of a notice under section20(8A) subsection (9) above shall not have effect in relation to any documentwhich contains information giving the identity or address of any taxpayer towhom the notice relates or of any person who has acted on behalf of any suchperson.

(13) Subsection (9) above is not disapplied by subsection (11) or (12) abovein the case of any document if—

(a) the information within subsection (11) or (12) is contained in some otherdocument, and

(b) either—

(i) that other document, or a copy of it, has been delivered to the inspectoror the Board, or

(ii) that other document has been inspected by an officer of the Board.

(14) Where subsection (9) above is disapplied by subsection (11) or (12) abovein the case of a document, the person to whom the notice is given either shalldeliver the document to the inspector or make it available for inspection byan officer of the Board or shall—

(a) deliver to the inspector (or, where subsection (3) above applies, theBoard) a copy (which is photographic or otherwise by way of facsimile) of anyparts of the document which contain the information within subsection (11) or(12), and

(b) if so required by the inspector (or, as the case may be, the Board), makeavailable for inspection by a named officer of the Board such parts of thedocument as contain that information;

and failure to comply with any requirement under paragraph (b) aboveshall constitute a failure to comply with the notice."

(8) This section shall apply with respect to notices given on or after the dayon which this Act is passed.

Marginal Citations

M51 1970c. 9.

145 Falsification etc. of documents.

(1) After section 20B of the [M52]Taxes Management Act 1970there shall be inserted—

"**20BB Falsification etc. of documents.**

(1) Subject to subsections (2) to (4) below, a person shall be guilty of anoffence if he intentionally falsifies, conceals, destroys or otherwisedisposes of, or causes or permits the falsification, concealment, destructionor disposal of, a document which—

(a) he has been required by a notice under section 20 or 20A above, or

(b) he has been given an opportunity in accordance with section 20B(1) above,

to deliver, or to deliver or make available for inspection.

(2) A person does not commit an offence under subsection (1) above if heacts—

(a) with the written permission of a General or Special Commissioner, theinspector or an officer of the Board,

(b) after the document has been delivered or, in a case within section 20(3)or (8A) above, inspected, or

(c) after a copy has been delivered in accordance with section 20B(4) or (14)above and the original has been inspected.

(3) A person does not commit an offence under subsection (1)(a) above if heacts after the end of the period of two years beginning with the date on whichthe notice is given, unless before the end of that period the inspector or anofficer of the Board has notified the person in writing that the notice hasnot been complied with to his satisfaction.

(4) A person does not commit an offence under subsection (1) (b) above if heacts—

(a) after the end of the period of six months beginning with the date on whichan opportunity to deliver the document was given, or

(b) after an application for consent to a notice being given in relation tothe document has been refused.

(5) A person guilty of an offence under subsection (1) above shall beliable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding twoyears or to a fine or to both."

(2) This section shall apply to any falsification, concealment, destructionor disposal of a document occurring on or after the day on which this Act ispassed.

Marginal Citations

M52 1970 c. 9.

146 Entry with warrant to obtain documents.

(1) Section 20C of the [M53]Taxes Management Act 1970 (entrywith warrant to obtain documents) shall be amended as follows.

(2) In subsection (1)—

(a) for the words "any form of fraud" there shall be substituted thewords "serious fraud", and

(b) for the words "has been" there shall be substituted the words "isbeing, has been or is about to be".

(3) After that subsection there shall be inserted—

"(1A) Without prejudice to the generality of the concept of serious fraud—

(a) any offence which involves fraud is for the purposes of this section anoffence involving serious fraud if its commission had led, or is intended orlikely to lead, either to substantial financial gain to any person or toserious prejudice to the proper assessment or collection of tax; and

(b) an offence which, if considered alone, would not be regarded as involvingserious fraud may nevertheless be so regarded if there is reasonable groundfor suspecting that it forms part of a course of conduct which is, or but forits detection would be, likely to result in serious prejudice to the properassessment or collection of tax.

(1B) The powers conferred by a warrant under this section shall not beexercisable—

(a) by more than such number of officers of the Board as may be specified inthe warrant;

(b) outside such times of day as may be so specified;

(c) if the warrant so provides, otherwise than in the presence of a constablein uniform."

(4) For subsections (3) to (5) there shall be substituted—

"(3) An officer who enters the premises under the authority of a warrant underthis section may—

(a) take with him such other persons as appear to him to be necessary;

(b) seize and remove any things whatsoever found there which he has reasonablecause to believe may be required as evidence for the purposes of proceedingsin respect of such an offence as is mentioned in subsection (1) above; and

(c) search or cause to be searched any person found on the premises whom hehas reasonable cause to believe to be in possession of any such things;

but no person shall be searched except by a person of the same sex.

(4) Nothing in subsection (3) above authorises the seizure and removal ofdocuments in the possession of a barrister, advocate or solicitor with respectto which a claim to professional privilege could be maintained.

(5) An officer of the Board seeking to exercise the powers conferred by awarrant under this section or, if there is more than one such officer, thatone of them who is in charge of the search—

(a) if the occupier of the premises concerned is present at the time thesearch is to begin, shall supply a copy of the warrant endorsed with his nameto the occupier;

(b) if at that time the occupier is not present but a person who appears tothe officer to be in charge of the premises is present, shall supply such acopy to that person; and

(c) if neither paragraph (a) nor paragraph (b) above applies, shall leave sucha copy in a prominent place on the premises.

(6) Where entry to premises has been made with a warrant under this section,and the officer making the entry has seized any things under the authority ofthe warrant, he shall endorse on or attach to the warrant a list of the thingsseized.

(7) Subsections (10) to (12) of section 16 of the Policeand Criminal Evidence Act 1984 (return, retention and inspection of warrants)apply to a warrant under this section (together with any list endorsed on orattached to it under subsection (6) above) as they apply to a warrant issuedto a constable under any enactment.

(8) Subsection (7) above extends to England and Wales only."

(5) This section shall apply with respect to warrants issued on or after theday on which this Act is passed.

Marginal Citations
M53 1970 c. 9.

147 Procedure where documents etc. are removed.

(1) The following section shall be inserted after section 20C of the [M54]Taxes Management Act 1970—

"**20CC Procedure where documents etc. are removed.**

(1) An officer of the Board who removes anything in the exercise of the powerconferred by section 20C above shall, if so requested by a person showinghimself—

(a) to be the occupier of premises from which it was removed, or

(b) to have had custody or control of it immediately before the removal,

provide that person with a record of what he removed.

(2) The officer of the Board shall provide the record within a reasonable timefrom the making of the request for it.

(3) Where anything which has been removed by an officer of the Board asmentioned in subsection (1) above is of such a nature that a photograph orcopy of it would be sufficient—

(a) for use as evidence at a trial for an offence, or

(b) for forensic examination or for investigation in connection with anoffence,

it shall not be retained longer than is necessary to establish that factand to obtain the photograph or copy.

(4) Subject to subsection (8) below, if a request for permission to be grantedaccess to anything which—

(a) has been removed by an officer of the Board, and

(b) is retained by the Board for the purpose of investigating an offence,

is made to the officer in overall charge of the investigation by a personwho had custody or control of the thing immediately before it was so removedor by someone acting on behalf of any such person, the officer shall allow theperson who made the request access to it under the supervision of an officerof the Board.

(5) Subject to subsection (8) below, if a request for a photograph or copy ofany such thing is made to the officer in overall charge of the investigationby a person who had custody or control of the thing immediately before it wasso removed, or by someone acting on behalf of any such person, the officershall—

(a) allow the person who made the request access to it under the supervisionof an officer of the Board for the purpose of photographing it or copying it,or

(b) photograph or copy it, or cause it to be photographed or copied.

(6) Where anything is photographed or copied under subsection (5)(b) above thephotograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be supplied within a reasonable time from themaking of the request.

(8) There is no duty under this section to grant access to, or to supply aphotograph or copy of, anything if the officer in overall charge of theinvestigation for the purposes of which it was removed has reasonable groundsfor believing that to do so would prejudice—

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposesof the investigation of which the thing was removed; or

(c) any criminal proceedings which may be brought as a result of—

(i) the investigation of which he is in charge, or

(ii) any such investigation as is mentioned in paragraph (b) above.

(9) Any reference in this section to the officer in overall charge of theinvestigation is a reference to the person whose name and address are endorsedon the warrant concerned as being the officer so in charge."

(2) This section shall apply with respect to warrants issued on or after theday on which this Act is passed.

Marginal Citations

M54 1970c. 9.

148 Interpretation.

(1) Section 20D of the [M55]Taxes Management Act 1970 shall beamended as follows.

(2) In subsection (2), for the words "of returns or accounts to be made ordelivered by the other" there shall be substituted the words "or deliveryof any information, return, accounts or other document which he knows will be,or is or are likely to be, used".

(3) For subsection (3) there shall be substituted—

"(3) Without prejudice to section 127 of the Finance Act1988, in sections 20 to 20CC above "document" has, subject to sections 20(8C) and 20A(1A), thesame meaning as it has—

(a) in relation to England and Wales, in Part I of the Civil Evidence Act 1968,

(b) in relation to Scotland, in Part III of the Law Reform(Miscellaneous Provisions) (Scotland) Act 1968, and

(c) in relation to Northern Ireland, in Part I of the Civil Evidence Act (Northern Ireland) 1971."

(4) Subsection (3) above shall not affect the meaning of "business" in sections 20 and 20C of the [M56]Taxes Management Act 1970 before the coming into force of sections 142and 146 above.

Marginal Citations

M55 1970 c. 9.

M56 1970 c.9.

Assessments, claims etc.

149 Assessments founded on fraudulent or negligent conduct.

(1) The following section shall be substituted for section 36 of the TaxesManagement Act 1970—

"**36 Fraudulent or negligent conduct.**

(1) An assessment on any person (in this section referred to as "theperson in default") for the purpose of making good to the Crown aloss of tax attributable to his fraudulent or negligent conduct or thefraudulent or negligent conduct of a person acting on his behalf may be madeat any time not later than twenty years after the end of the chargeable periodto which the assessment relates.

(2) Where the person in default is an individual who carried on a trade orprofession in partnership with another individual, or with other persons atleast one of whom is an individual, at any time in the year for which theassessment is made, an assessment in respect of the profits or gains of thetrade or profession for the purpose mentioned in subsection (1) above may bemade not only on the person in default but also on his partner or, as the casemay be, on any of his partners who is an individual.

(3) If the person on whom the assessment is made so requires, in determiningthe amount of the tax to be charged for any chargeable period in anyassessment made for the purpose mentioned in subsection (1) above, effectshall be given to any relief or allowance to which he would have been entitledfor that chargeable period on a claim or application made within the timeallowed by the Taxes Acts."

(2) Sections 37 to 39 (special provisions as to "neglect") and section41 (leave required for certain assessments) of the Taxes Management Act 1970shall cease to have effect.

(3) The words "section 36" shall be substituted—

(a) for the words "sections 36, 37 and 39" in section 30(6) of the [M57]Taxes Management Act 1970 (tax repaid in error etc.),

(b) for the words "sections 37 to 39" in section 118(3) ofthat Act (effect under law of Scotland of assessment in partnership name),

(c) for the words "sections 36 and 39" in paragraph 10(1) of Schedule 13to the Taxes Act 1988 (assessments to advance corporation tax), and

(d) for the words "sections 36 and 37" in paragraph 10(1) of Schedule 16to that Act (assessments to income tax on company payments which are notdistributions).

(4) The words " fraudulent or negligent conduct " shall besubstituted—

(a) for the words "fraud, wilful default or neglect" in—

(i) section 37A of the Taxes Management Act 1970 (married couples),

(ii) section 40(2) of that Act (assessment on personal representatives), and

(iii) paragraph 9 of Schedule 16A to the [M58]Finance Act 1973and of Schedule 19A to the Taxes Act 1988 (Lloyd's), and

(b) for the words "fraud and wilful default) and section 37 of that Act(neglect" in section 307(5) of the Taxes Act 1988 (assessments forwithdrawing relief under Chapter III of Part VII of that Act).

(5) In section 105 of the Taxes Management Act 1970 (admissibility ofevidence), for the words "fraud or default" and the words "fraud orwilful default" there shall be substituted the words "fraudulentconduct".

(6) In paragraph 9 of Schedule 16A to the Finance Act 1973 and of Schedule 19Ato the Taxes Act 1988, for "37, 40 and 41" there shall be substituted "and 40".

(7) Nothing in this section shall affect the making of assessments—
(a) for years of assessment before the year 1983-84, or
(b) for accounting periods which ended before 1st April 1983.

Marginal Citations
M57 1970 c.9.
M58 1973 c. 51.

150 Further assessments: claims etc.

(1) The following sections shall be inserted after section 43 of the TaxesManagement Act 1970—

"**43A Further assessments: claims etc.**

(1) This section applies where—
(a) by virtue of section 29(3) of this Act an assessment is made on any personfor a chargeable period, and
(b) the assessment is not made for the purpose of making good to the Crown anyloss of tax attributable to his fraudulent or negligent conduct or thefraudulent or negligent conduct of a person acting on his behalf.

(2) Without prejudice to section 43(2) above but subject to section 43B below,where this section applies—
(a) any relevant claim, election, application or notice which could have beenmade or given within the time allowed by the Taxes Acts may be made or givenat any time within one year from the end of the chargeable period in which theassessment is made, and
(b) any relevant claim, election, application or notice previously made orgiven may at any such time be revoked or varied—
(i) in the same manner as it was made or given, and
(ii) by or with the consent of the same person or persons who made, gave orconsented to it (or, in the case of any such person who has died, by or withthe consent of his personal representatives),
except where by virtue of any enactment it is irrevocable.

(3) For the purposes of this section and section 43B below, a claim, election,application or notice is relevant in relation to an assessment for achargeable period if—

(a) it relates to that chargeable period or is made or given by reference toan event occurring in that chargeable period, and

(b) it or, as the case may be, its revocation or variation has or could havethe effect of reducing any of the liabilities mentioned in subsection (4)below.

(4) The liabilities referred to in subsection (3) above are—

(a) the increased liability to tax resulting from the assessment,

(b) any other liability to tax of the person concerned for—

(i) the chargeable period to which the assessment relates, or

(ii) any chargeable period which follows that chargeable period and ends notlater than one year after the end of the chargeable period in which theassessment is made.

(5) Where a claim, election, application or notice is made, given, revoked orvaried by virtue of subsection (2) above, all such adjustments shall be made,whether by way of discharge or repayment of tax or the making of assessmentsor otherwise, as are required to take account of the effect of the taking ofthat action on any person's liability to tax for any chargeable period.

(6) The provisions of this Act relating to appeals against decisions on claimsshall apply with any necessary modifications to a decision on the revocationor variation of a claim by virtue of subsection (2) above.

43B Limits on application of section 43A.

(1) If the effect of the exercise by any person of a power conferred bysection 43A(2) above—

(a) to make or give a claim, election, application or notice, or

(b) to revoke or vary a claim, election, application or notice previously madeor given,

would be to alter the liability to tax of another person, that power maynot be exercised except with the consent in writing of that other person or,where he has died, his personal representatives.

(2) Where—

(a) a power conferred by subsection (2) of section 43A above is exercised inconsequence of an assessment made on a person, and

(b) the exercise of the power increases the liability to tax of anotherperson,

that section shall not apply by reason of any assessment made because ofthat increased liability.

(3) In any case where—

(a) one or more relevant claims, elections, applications or notices are made,given, revoked or varied by virtue of the application of section 43A above inthe case of an assessment, and

(b) the total of the reductions in liability to tax which, apart from thissubsection, would result from the action mentioned in paragraph (a) abovewould exceed the additional liability to tax resulting from the assessment,

the excess shall not be available to reduce any liability to tax.

(4) Where subsection (3) above has the effect of limiting either the reductionin a person's liability to tax for more than one period or the reduction inthe liability to tax of more than one person, the limited amount shall beapportioned between the periods or persons concerned—

(a) except where paragraph (b) below applies, in such manner as may bespecified by the inspector by notice in writing to the person or personsconcerned, or

(b) where the person concerned gives (or the persons concerned jointly give)notice in writing to the inspector within the relevant period, in such manneras may be specified in the notice given by the person or persons concerned.

(5) For the purposes of paragraph (b) of subsection (4) above the relevantperiod is the period of 30 days beginning with the day on which notice underparagraph (a) of that subsection is given to the person concerned or, wheremore than one person is concerned, the latest date on which such notice isgiven to any of them."

(2) This section shall apply in relation to any assessment notice of which isissued on or after the day on which this Act is passed.

151 Assessment of trustees etc.

(1) Income tax chargeable in respect of income arising to the trustees of asettlement, or to the personal representatives of a deceased person, may beassessed and charged on and in the name of any one or more of the relevanttrustees or, as the case may be, the relevant personal representatives.

(2) In this section "the relevant trustees", in relation toany income, means the trustees to whom the income arises and any subsequenttrustees of the settlement, and "the relevant personalrepresentatives" has a corresponding meaning.

(3) In this section "personal representatives" has the samemeaning as in section 111 of this Act.

(4) This section shall be deemed always to have had effect.

Distress and poinding etc.

VALID FROM 01/02/1994

152 Distress for non-payment of tax.

(1) Section 61 of the [M59]Taxes Management Act 1970 (distress)shall be amended as follows.

(2) In subsection (1), for the words "the collector shall" onwards thereshall be substituted the words "the collector may distrain upon the goods and chattels of the personcharged (in this section referred to as "the person indefault")."

(3) In subsection (2), for the words from "a collector" to "Commissioners" there shall be substituted the words "a justice of thepeace, on being satisfied by information on oath that there is reasonableground for believing that a person is neglecting or refusing to pay a sumcharged, may issue a warrant in writing authorising a collector to".

(4) In subsection (4), for the words "neglecting or refusing to pay"there shall be substituted the words "in default".

(5) In subsection (5)—

(a) for the word "aforesaid" there shall be substituted the words "indefault",

(b) the words "within the said five days" shall be omitted,

(c) for the words from "two or more inhabitants of the parish" to "sufficient persons" there shall be substituted the words "one or moreindependent persons appointed by the collector", and

(d) the words from "The costs" to "the collector, and" shall beomitted.

(6) The following subsection shall be added after that subsection—

"(6) The Treasury may by regulations make provision with respect to—

(a) the fees chargeable on or in connection with the levying of distress, and

(b) the costs and charges recoverable where distress has been levied;

and any such regulations shall be made by statutory instrument whichshall be subject to annulment in pursuance of a resolution of the House ofCommons."

(7) This section shall come into force on such day as the Treasury may byorder made by statutory instrument appoint.

Marginal Citations

M59 1970 c. 9.

153 Priority in cases of distraint by others.

(1) Section 62 of the [M60]Taxes Management Act 1970 (priorityof claim for tax) shall be amended as follows.

(2) In subsection (1)—

(a) for the words from the beginning to "shall be" there shall besubstituted the words "If at any time at which any goods or chattelsbelonging to any person (in this section referred to as "the personin default") are",

(b) for the word "unless" there shall be substituted the words "theperson in default is in arrears in respect of any such sums as are referredto in subsection (1A) below, the goods or chattels may not be so taken unlesson demand made by the collector", and

(c) for the words "arrears of tax" onwards there shall be substituted thewords "such sums as have fallen due at or before the date of seizure."

(3) The following subsection shall be inserted after that subsection—

"(1A) The sums referred to in subsection (1) above are—

(a) sums due from the person in default on account of deductions of income taxfrom emoluments paid during the period of twelve months next before the dateof seizure, being deductions which the person in default was liable to makeunder section 203 of the principal Act (pay as you earn) less the amount ofthe repayments of income tax which he was liable to make during that period;and

(b) sums due from the person in default in respect of deductions required tobe made by him for that period under section 559 of the principal Act(sub-contractors in the construction industry)."

(4) In subsection (2)—

(a) for the words from the beginning to "the collector shall" there shallbe substituted the words "If the sums referred to in subsection (1) aboveare not paid within ten days of the date of the demand referred to in thatsubsection, the collector may",

(b) for the words "shall proceed" there shall be substituted the words "may proceed", and

(c) for the words "the tax charged and claimed" there shall besubstituted the words "those sums".

Marginal Citations

M60 1970 c. 9.

154 Recovery of tax from debtor in Scotland.

(1) Section 63 of the [M61]Taxes Management Act 1970 (recoveryof tax in Scotland) shall be amended as follows.

(2) In subsection (3), for the words "which relates to" onwards thereshall be substituted the words "insofar as it relates to sums due in respect of—

(a) deductions of income tax which any person specified in the application wasliable to make under section 203 of the principal Act (pay as you earn); or

(b) deductions required to be made under section 559 of the principal Act(sub-contractors in the construction industry) by any person specified in theapplication."

(3) The following subsection shall be added after that subsection—

"(4) In this section references to amounts of tax due and references to sumsdue in respect of deductions include references to amounts which are deemedto be—

(a) amounts of tax which the person is liable to pay by virtue of the Income Tax (Employments) Regulations 1973; or

(b) amounts which the person is liable to pay by virtue of the Income Tax(Sub-Contractors in the Construction Industry)Regulations 1975."

Marginal Citations
M61 1970 c. 9.

155 Priority in cases of poinding etc. by others in Scotland.

(1) Section 64 of the Taxes Management Act 1970 (priority of claim for tax inScotland) shall be amended as follows.

(2) In subsection (1)—

(a) for the words from the beginning to "shall be" there shall besubstituted the words "If at any time at which any moveable goods andeffects belonging to any person (in this section referred to as "theperson in default") are",

(b) for the word "unless" there shall be substituted the words "theperson in default is in arrears in respect of any such sums as are referredto in subsection (1A) below, the goods and effects may not be so taken unlesson demand made by the collector", and

(c) for the words "the tax so in arrear" onwards there shall besubstituted the words "such sums as have fallen due at or before the dateof poinding or, as the case may be, other diligence or assignation."

(3) The following subsection shall be inserted after that subsection—

"(1A) The sums referred to in subsection (1) above are—

(a) sums due from the person in default on account of deductions of income taxfrom emoluments paid during the period of twelve months next before the dateof poinding, being deductions which the person in default was liable to makeunder section 203 of the principal Act (pay as you earn) less the amount ofthe repayments of income tax which he was liable to make during that period;and

(b) sums due from the person in default in respect of deductions required tobe made by him for that period under section 559 of the principal Act(sub-contractors in the construction industry)."

(4) In subsection (2)—

(a) for the words from the beginning to "the tax claimed shall" thereshall be substituted the words "If the sums referred to in subsection (1)above are not paid within ten days of the date of the demand referred to inthat subsection, the sums shall", and

(b) for the words "proceeding at his instance" there shall be substitutedthe word "proceedings".

Interest etc.

156 Interest on overdue tax.

(1) In section 86 of the [M62]Taxes Management Act 1970, forsubsection (3) and the words in subsection (4) preceding the Table there shallbe substituted—

"(3) For the purposes of this section—

(a) the reckonable date in relation to any tax charged by an assessment toincome tax under Schedule E, and

(b) subject to subsection (3A) below, the reckonable date in relation to taxcharged by any other assessment to which this section applies,

is the date on which the tax becomes due and payable.

(3A) Where an appeal has been made against an assessment and any of the taxcharged by the assessment is due and payable on a date later than the dategiven by the Table in subsection (4) below, the reckonable date in relationto the tax so due and payable is the later of—

(a) the date given by that Table, and

(b) the date on which the tax would have been due and payable if there hadbeen no appeal against the assessment (assuming in a case where the tax wouldnot have been charged by the assessment if there had been no appeal that itwas so charged).

(4) The Table referred to in subsection (3A) above is asfollows—".

(2) In section 55 of that Act—

(a) in subsection (2), for the words "it were" onwards there shall besubstituted the words "there had been no appeal.",

(b) in subsection (6), for paragraphs (a) and (b) there shall besubstituted—

"(a) in the case of a determination made on an application under subsection (3)above, other than an application made by virtue of subsection (3A) above, thedate on which any tax the payment of which is not so postponed is due andpayable shall be determined as if the tax were charged by an assessment noticeof which was issued on the date of that determination and against which therehad been no appeal; and

(b) in the case of a determination made on an application under subsection (4)above—

(i) the date on which any tax the payment of which ceases to be so postponedis due and payable shall be determined as if the tax were charged by anassessment notice of which was issued on the date of that determination andagainst which there had been no appeal; and

(ii) any tax overpaid shall be repaid."and

(c) for subsection (9) there shall be substituted—

"(9) On the determination of the appeal—

(a) the date on which any tax payable in accordance with that determinationis due and payable shall, so far as it is tax the payment of which had beenpostponed, or which would not have been charged by the assessment if there hadbeen no appeal, be determined as if the tax were charged by anassessment—

(i) notice of which was issued on the date on which the inspector issues tothe appellant a notice of the total amount payable in accordance with thedetermination, and

(ii) against which there had been no appeal; and

(b) any tax overpaid shall be repaid."

(3) In section 56(9) of that Act, for the words "amount of" there shallbe substituted the words "amount charged by".

(4) This section shall apply to tax charged by any assessment notice of whichis issued after 30th July 1982.

Marginal Citations
M62 1970 c. 9.

157 Effect of certain claims on interest.

(1) In relation to any tax charged by an assessment made under section 252(1)of the Taxes Act 1988 to recover corporation tax that becomes payable as aresult of the making of a claim under section 240 of that Act, the reckonabledate for the purposes of section 86 of the [M63]Taxes ManagementAct 1970 (in this section referred to as "section 86") is the date which is given by paragraph 5 ofthe Table in subsection (4) of that section.

(2) Subsections (3) and (4) below apply in any case where—

(a) there is in any accounting period of a company (in this section referredto as "the later period") an amount of surplus advance corporationtax, as defined in subsection (3) of section 239 of the Taxes Act 1988, and

(b) pursuant to a claim under the said subsection (3), the whole or any partof that amount is treated for the purposes of the said section 239 asdischarging liability for an amount of corporation tax for an earlieraccounting period (in this section referred to as "the earlier period"), and

(c) if the claim under the said subsection (3) had not been made—

(i) an amount of corporation tax assessed for the earlier period would carryinterest in accordance with section 86, or

(ii) an assessment could have been made under section 252(1) of that Act torecover corporation tax for the earlier period.

(3) In determining the amount of interest payable under section 86 oncorporation tax unpaid for the earlier period, no account shall be taken ofany reduction in the amount of that tax which results from section 239(3) ofthe Taxes Act 1988 except so far as concerns interest for any time after theday following the expiry of nine months from the end of the later period.

(4) Where, but for the claim under section 239(3) of the Taxes Act 1988, anassessment could have been made under section 252(1) of that Act to recovercorporation tax for the earlier period, interest under section 86 shall bechargeable, in relation to any time not later than the day referred to insubsection (3) above, as if the claim had not been made and such an assessmenthad been made.

(5) In relation to interest charged under section 86 by virtue of subsection(4) above, section 69 of the [M64]Taxes Management Act 1970shall have effect with the substitution for the words following paragraph (c)of the words "as if it were tax charged and due and payable under anassessment".

(6) In this section—

(a) subsection (1) above shall have effect where the claim under 240 of theTaxes Act 1988 is made on or after 14th March 1989, and

(b) subsections (2) to (5) above shall have effect where the claim undersection 239(3) of that Act is made on or after that date,

but this section shall not have effect in relation to corporation tax forany accounting period ending after the day which is the appointed day for thepurposes of section 85 of the [M65]Finance (No.2) Act 1987.

Marginal Citations

M63 1970 c. 9.

M64 1970 c. 9.

M65 1987 c. 51.

158 Small amounts of interest.

(1) In the Taxes Management Act 1970—

(a) section 86(6) (remission of interest payable on overdue income tax,capital gains tax or corporation tax where interest would not exceed£30), and

(b) section 87(4) (no interest payable on overdue advance corporation tax orincome tax on company payments where interest would not exceed £30),

shall cease to have effect.

(2) The words "of not less than £25" in—

(a) section 47(1) of the [M66]Finance (No.2) Act 1975 (norepayment supplement where overdue repayment of capital gains tax less than£25), and

(b) section 824(1)(a) and (b) and (5) of the Taxes Act 1988 (no repaymentsupplement where overdue repayment of income tax etc. less than £25),

and the words "of not less than £100" in section 825(2) of theTaxes Act 1988 (no repayment supplement where overdue repayment of company taxless than £100) shall cease to have effect.

(3) Paragraph (a) of subsection (1) above shall have effect—

(a) in relation to income tax under Schedule E, where the demand for the taxis made on or after the appointed day, and

(b) in any other case, where the tax is charged by an assessment notice ofwhich is issued on or after the appointed day.

(4) Paragraph (b) of that subsection shall have effect where the tax ischarged by an assessment relating to an accounting period beginning on orafter the appointed day.

(5) Subsection (2) above shall have effect in relation to repayments of taxmade on or after the appointed day.

(6) In this section "the appointed day" means such day as theTreasury may by order made by statutory instrument appoint; and different daysmay be appointed for different enactments or for different purposes of thesame enactment.

Marginal Citations
M66 1975 c. 45.

159 Interest on tax in case of failure or error.

(1) Section 88 of the [M67]Taxes Management Act 1970 (intereston tax recovered to make good loss due to taxpayer's fault) shall be amendedas follows.

(2) In subsection (1), for the words "the fraud, wilful default or neglectof any person" there shall be substituted the words—

"(a) a failure to give a notice, make a return or produce or furnish a documentor other information required by or under the Taxes Acts, or

(b) an error in any information, return, accounts or other document deliveredto an inspector or other officer of the Board,".

(3) The following subsection shall be added at the end—

"(7) In paragraph (a) of subsection (1) above the reference to a failure to dosomething includes, in relation to anything required to be done at aparticular time or within a particular period, a reference to a failure to doit at that time or within that period; and, accordingly, section 118(2) ofthis Act shall not apply for the purposes of that paragraph."

(4) This section shall have effect in relation to failures occurring, anderrors in any information or documents delivered, on or after the day on whichthis Act is passed.

Marginal Citations
M67 1970 c. 9.

160 Determinations under TMA s. 88.

(1) In subsection (1) of section 88 of the Taxes Management Act 1970, for thewords "shall carry" there shall be substituted the words "shall, if aninspector or the Board so determine, carry".

(2) The following section shall be inserted after that section—

"**88A Determinations under section 88.**

(1) Notice of a determination under section 88 above shall be served on theperson liable to pay the interest to which it relates and shall specify—

(a) the date on which it is issued,

(b) the amount of the tax which carries interest and the assessment by whichthat tax was charged,

(c) the date when for the purposes of section 88 above that tax ought to havebeen paid, and

(d) the time within which an appeal against the determination may be made.

(2) After the notice of a determination under section 88 above has been servedthe determination shall not be altered except in accordance with this section.

(3) A determination under section 88 above may be made at any time—

(a) within six years after the end of the chargeable period for which the taxcarrying the interest is charged (or, in the case of development land tax, ofthe financial year in which the liability for that tax arose), or

(b) within three years after the date of the final determination of the amountof that tax.

(4) An appeal may be brought against a determination under section 88 aboveand, subject to the following provisions of this section, the provisions ofthis Act relating to appeals shall have effect in relation to an appealagainst such a determination as they have effect in relation to an appealagainst an assessment to tax.

(5) On an appeal against a determination under section 88 above section 50(6)to (8) of this Act shall not apply but the Commissioners may—

(a) if it appears to them that the tax carries no interest under that section,set the determination aside,

(b) if the determination appears to them to be correct, confirm thedetermination, or

(c) if the determination appears to them to be incorrect as to the amount oftax or the date on which the tax ought to have been paid, revise thedetermination accordingly."

(3) In section 70 (certificates) of the [M68]Taxes ManagementAct 1970, for subsection (3) there shall be substituted—

"(3) A certificate of the inspector or any other officer of the Board that ithas been determined that tax carries interest under section 88 of this Act,together with a certificate of the collector that payment of the interest hasnot been made to him, or, to the best of his knowledge and belief, to anyother collector, or to any person acting on his behalf or on behalf of anothercollector, shall be sufficient evidence—

(a) that interest is chargeable on the tax from the date when for the purposesof section 88 of this Act the tax ought to have been paid, and

(b) that the sum mentioned in the certificate is unpaid and is due to theCrown;

and any document purporting to be such a certificate as is mentioned inthis subsection shall be deemed to be such a certificate unless the contraryis proved."

(4) In section 113 of that Act (form of documents), the following subsectionshall be inserted after subsection (1B)—

"(1C) Where an officer of the Board has decided that an amount of tax carriesinterest under section 88 of this Act and has taken the decisions needed forarriving at the date when for the purposes of that section that tax ought tohave been paid, he may entrust to any other officer of the Boardresponsibility for completing the determination procedure, whether by meansinvolving the use of a computer or otherwise, including responsibility forserving notice of the determination on the person liable to the interest."

(5) In section 114 of that Act (want of form not to invalidate), after theword "assessment", in each place where it occurs, there shall be insertedthe words "or determination".

(6) In paragraph 5 of Schedule 3 to that Act (rules for assigning proceedingsto Commissioners), the following entry shall be inserted in the first columnafter the entry relating to an appeal against an assessment to capital gainstax— " An appeal against a determination under section 88 of this Act. "

Marginal Citations
M68 1970 c. 9.

161 Tax carrying interest under TMA ss. 86 and 88.

The following subsection shall be substituted for section 88(3) of the [M69]Taxes Management Act 1970—

"(3) Where it is finally determined that any tax carries interest under thissection, the tax shall carry no interest under section 86 or 86A above (and,accordingly, any interest under either of those sections which has been paidbefore the final determination shall be set off against the amount of theinterest under this section); and for the purposes of this subsection adetermination that tax carries interest is not final until it can no longerbe varied, whether by any Commissioners on appeal or by the order of anycourt."

Marginal Citations
M69 1970 c. 9.

Penalties

162 Failure to make return.

(1) Section 93 of the Taxes Management Act 1970 (failure to comply with noticeto make return for income tax or capital gains tax) shall be amended asfollows.

(2) In subsection (1) (initial and daily penalties), for paragraphs (a) and(b) there shall be substituted—

"(a) to a penalty not exceeding £300, and

(b) if the failure continues after a penalty is imposed under paragraph (a)above, to a further penalty or penalties not exceeding £60 for each dayon which the failure continues after the day on which the penalty underparagraph (a) above was imposed (but excluding any day for which a penaltyunder this paragraph has already been imposed)."

(3) The following subsection shall be substituted for subsection (2)—

"(2) If a failure by a person to comply with a notice such as is referred toin subsection (1) above continues after the end of the year of assessmentfollowing that during which it was served then, without prejudice

to anypenalty under subsection (1) above, he shall be liable to a penalty of anamount not exceeding so much of the tax with which he is charged (whether forone or for more than one year of assessment) in assessments—

(a) based wholly or partly on any income or chargeable gains that ought tohave been included in the return required by the notice, and

(b) made after the end of the year next following the year of assessment inwhich the notice was served,

as is attributable to the income or chargeable gains that ought to havebeen so included."

(4) The following subsection shall be substituted for subsection (5)—

"(5) No penalty shall be imposed under subsection (1) above in respect of afailure at any time after the failure has been remedied."

(5) The following subsection shall be substituted for subsection (7)—

"(7) If the person on whom a notice is served proves that there was no incomeor chargeable gain to be included in the return, the penalty under thissection shall not exceed £100."

(6) This section shall apply in relation to any failure to comply with anotice served on or after 6th April 1989.

163 Incorrect return, accounts etc.

(1) In—

(a) section 95(1) of the [M70]Taxes Management Act 1970(incorrect return etc. for income tax or capital gains tax), and

(b) section 96(1) of that Act (incorrect return etc. for corporation tax),

for the words "the aggregate" onwards there shall be substituted thewords "the amount of the difference specified in subsection (2) below."

(2) This section shall apply in relation to returns, statements, declarationsor accounts delivered, made or submitted on or after the day on which this Actis passed.

Marginal Citations

M70 1970 c. 9.

164 Special returns, information etc.

(1) Section 98 of the Taxes Management Act 1970 (special returns, informationetc.) shall be amended as follows.

(2) In subsection (1) (initial and daily penalties)—

(a) for the word "Where" there shall be substituted the words "Subjectto section 98A below, where", and

(b) for the words "subsection (3)" onwards there shall be substituted thewords "subsections (3) and (4) below—

(i) to a penalty not exceeding £300, and

(ii) if the failure continues after a penalty is imposed under paragraph (i)above, to a further penalty or penalties not exceeding £60 for each dayon which the failure continues after the day on which the penalty underparagraph (i) above was imposed (but excluding any day for which a penaltyunder this paragraph has already been imposed).”

(3) In subsection (2) (maximum penalty for information given fraudulently ornegligently) —

(a) for the word “Where” there shall be substituted the words “Subjectto section 98A below, where”, and

(b) for the words “ £250, or, in the case of fraud, £500”there shall be substituted “ £3,000”.

(4) The following subsections shall be substituted for subsection (3)—

“(3) No penalty shall be imposed under subsection (1) above in respect of afailure within paragraph (a) of that subsection at any time after the failurehas been remedied.

(4) No penalty shall be imposed under paragraph (ii) of subsection (1) abovein respect of a failure within paragraph (b) of that subsection at any timeafter the failure has been remedied.”

(5) In the Table—

(a) in the first column, in the entry relating to Part III of the [M71]Taxes Management Act 1970, the words “, except sections 16 and 24(2)” shall be omitted;

(b) the entries relating to sections 38(5) and 42 of the Taxes Act 1988 shallbe moved from the second column to the appropriate place in the first column;and

(c) the entry relating to section 481(5)(k) of that Act shall be omitted fromthe first column and an entry relating to section 482(2) of that Act shall beinserted at the appropriate place in the second column.

(6) In consequence of the amendment made by subsection (5)(a) above section16(6) of the Taxes Management Act 1970 shall cease to have effect.

(7) This section shall apply in relation to—

(a) any failure to comply with a notice or to furnish information, give acertificate or produce a document or record beginning on or after the day onwhich this Act is passed, and

(b) the furnishing, giving, producing or making of any incorrect information,certificate, document, record or declaration on or after that day.

Marginal Citations
M71 1970 c.9.

165 Special penalties in the case of certain returns.

(1) The following section shall be inserted after section 98 of the TaxesManagement Act 1970—

"**98A Special penalties in the case of certain returns.**

(1) Regulations under section 203(2) (PAYE) or 566(1) (sub-contractors) of theprincipal Act may provide that this section shall apply in relation to anyspecified provision of the regulations.

(2) Where this section applies in relation to a provision of regulations, anyperson who fails to make a return in accordance with the provision shall beliable—

(a) to a penalty or penalties of the relevant monthly amount for each month(or part of a month) during which the failure continues, but excluding anymonth after the twelfth or for which a penalty under this paragraph hasalready been imposed, and

(b) if the failure continues beyond twelve months, without prejudice to anypenalty under paragraph (a) above, to a penalty not exceeding so much of theamount payable by him in accordance with the regulations for the year ofassessment to which the return relates as remained unpaid at the end of 19thApril after the end of that year.

(3) For the purposes of subsection (2)(a) above, the relevant monthly amountin the case of a failure to make a return—

(a) where the number of persons in respect of whom particulars should beincluded in the return is fifty or less, is £100, and

(b) where that number is greater than fifty, is £100 for each fifty suchpersons and an additional £100 where that number is not a multiple offifty.

(4) Where this section applies in relation to a provision of regulations, anyperson who fraudulently or negligently makes an incorrect return of a kindmentioned in the provision shall be liable to a penalty not exceeding thedifference between—

(a) the amount payable by him in accordance with the regulations for the yearof assessment to which the return relates, and

(b) the amount which would have been so payable if the return had beencorrect."

[[F26](2) In relation to a failure to make a return beginning before such day as theTreasury may by order made by statutory instrument appoint, section 98A(2)shall have effect with the substitution of the following paragraph forparagraph (a)—

"(a) to—

(i) a penalty not exceeding twelve times the relevant monthly amount, and

(ii) if the failure continues after a penalty is imposed under sub-paragraph(i) above, a further penalty or penalties of the relevant monthly amount foreach month (or part of a month) during which the failure continues, butexcluding any month after the twelfth or for which a penalty under thissub-paragraph has already been imposed,".**]**

Textual Amendments

F26 S. 165(2) repealed (*prosp.*) by Finance Act 1989 (c. 26, SIF 63:1), s. 187(1), **Sch. 17 Pt. VIII**

166 Assisting in preparation of incorrect return etc.

(1) The following section shall be substituted for section 99 of the [M72]Taxes Management Act 1970—

"**99 Assisting in preparation of incorrect return etc.**

Any person who assists in or induces the preparation or delivery of anyinformation, return, accounts or other document which—

(a) he knows will be, or is or are likely to be, used for any purpose of tax,and

(b) he knows to be incorrect,

shall be liable to a penalty not exceeding £3,000."

(2) This section shall apply in relation to assistance and inducementsoccurring on or after the day on which this Act is passed.

Marginal Citations
M72 1970c. 9.

167 Determination of penalties.

The following sections shall be substituted for section 100 of the [M73]Taxes Management Act 1970—

"**100 Determination of penalties by officer of Board.**

(1) Subject to subsection (2) below and except where proceedings for a penaltyhave been instituted under section 100D below or a penalty has been imposedby the Commissioners under section 53 of this Act, an officer of the Boardauthorised by the Board for the purposes of this section may make adetermination imposing a penalty under any provision of the Taxes Acts andsetting it at such amount as, in his opinion, is correct or appropriate.

(2) Subsection (1) above does not apply where the penalty is a penaltyunder—

(a) section 93(1) above as it has effect before the amendments made by section162 of the Finance Act 1989 or section 93(1)(a) above as it has effect afterthose amendments,

(b) section 94(1) above as it has effect before the substitution made bysection 83 of the Finance (No.2) Act 1987,

(c) section 98(1) above as it has effect before the amendments made by section164 of the Finance Act 1989 or section 98(1)(i) above as it has effect afterthose amendments, or

(d) paragraph (a)(i) of section 98A(2) above as it has effect by virtue ofsection 165(2) of the Finance Act 1989.

(3) Notice of a determination of a penalty under this section shall be servedon the person liable to the penalty and shall state the date on which it isissued and the time within which an appeal against the determination may bemade.

(4) After the notice of a determination under this section has been served thedetermination shall not be altered except in accordance with this section oron appeal.

(5) If it is discovered by an officer of the Board authorised by the Board forthe purposes of this section that the amount of a penalty determined underthis section is or has become insufficient the officer may make adetermination in a further amount so that the penalty is set at the amountwhich, in his opinion, is correct or appropriate.

(6) In any case where—

(a) a determination under this section is of a penalty under section 94(6)above, and

(b) after the determination has been made it is discovered by an officer ofthe Board authorised by the Board for the purposes of this section that theamount which was taken into account as the relevant amount of tax is or hasbecome excessive,

the determination shall be revised so that the penalty is set at theamount which is correct; and, where more than the correct amount has alreadybeen paid, the appropriate amount shall be repaid.

100A Provisions supplementary to section 100.

(1) Where a person who has incurred a penalty has died, a determination undersection 100 above which could have been made in relation to him may be madein relation to his personal representatives, and any penalty imposed onpersonal representatives by virtue of this subsection shall be a debt due fromand payable out of his estate.

(2) A penalty determined under section 100 above shall be due and payable atthe end of the period of thirty days beginning with the date of the issue ofthe notice of determination.

(3) A penalty determined under section 100 above shall for all purposes betreated as if it were tax charged in an assessment and due and payable.

100B Appeals against penalty determinations.

(1) An appeal may be brought against the determination of a penalty undersection 100 above and, subject to the following provisions of this section,the provisions of this Act relating to appeals shall have effect in relationto an appeal against such a determination as they have effect in relation toan appeal against an assessment to tax.

(2) On an appeal against the determination of a penalty under section 100above section 50(6) to (8) of this Act shall not apply but—

(a) in the case of a penalty which is required to be of a particular amount,the Commissioners may—

(i) if it appears to them that no penalty has been incurred, set thedetermination aside,

(ii) if the amount determined appears to them to be correct, confirm thedetermination, or

(iii) if the amount determined appears to them to be incorrect, increase orreduce it to the correct amount,

(b) in the case of any other penalty, the Commissioners may—

(i) if it appears to them that no penalty has been incurred, set thedetermination aside,

(ii) if the amount determined appears to them to be appropriate, confirm thedetermination,

(iii) if the amount determined appears to them to be excessive, reduce it tosuch other amount (including nil) as they consider appropriate, or

(iv) if the amount determined appears to them to be insufficient, increase itto such amount not exceeding the permitted maximum as they considerappropriate.

(3) Without prejudice to section 56 of this Act, an appeal from a decision ofthe Commissioners against the amount of a penalty which has been determinedunder section 100 above or this section shall lie, at the instance of theperson liable to the penalty, to the High Court or, in Scotland, to the Courtof Session as the Court of Exchequer in Scotland; and on that appeal the courtshall have the like jurisdiction as is conferred on the Commissioners byvirtue of this section.

100C Penalty proceedings before Commissioners.

(1) An officer of the Board authorised by the Board for the purposes of thissection may commence proceedings before the General or Special Commissionersfor any penalty to which subsection (1) of section 100 above does not applyby virtue of subsection (2) of that section.

(2) Proceedings under this section shall be by way of information in writing,made to the Commissioners, and upon summons issued by them to the defendant(or defender) to appear before them at a time and place stated in the summons;and they shall hear and decide each case in a summary way.

(3) Any penalty determined by the Commissioners in proceedings under thissection shall for all purposes be treated as if it were tax charged in anassessment and due and payable.

(4) An appeal against the determination of a penalty in proceedings under thissection shall lie to the High Court or, in Scotland, the Court of Session asthe Court of Exchequer in Scotland—

(a) by any party on a question of law, and

(b) by the defendant (or, in Scotland, the defender) against the amount of thepenalty.

(5) On any such appeal the court may—

(a) if it appears that no penalty has been incurred, set the determinationaside,

(b) if the amount determined appears to be appropriate, confirm thedetermination,

(c) if the amount determined appears to be excessive, reduce it to such otheramount (including nil) as the court considers appropriate, or

(d) if the amount determined appears to be insufficient, increase it to suchamount not exceeding the permitted maximum as the court considers appropriate.

100D Penalty proceedings before court.

(1) Where in the opinion of the Board the liability of any person for apenalty arises by reason of the fraud of that or any other person, proceedingsfor the penalty may be instituted before the High Court or, in Scotland, theCourt of Session as the Court of Exchequer in Scotland.

(2) Proceedings under this section which are not instituted (in England, Walesor Northern Ireland) under the Crown Proceedings Act 1947by and in the name of the Board as an authorised department for the purposesof that Act shall be instituted—

(a) in England and Wales, in the name of the Attorney General,

(b) in Scotland, in the name of the Lord Advocate, and

(c) in Northern Ireland, in the name of the Attorney General for NorthernIreland.

(3) Any proceedings under this section instituted in England and Wales shallbe deemed to be civil proceedings by the Crown within the meaning of Part IIof the Crown Proceedings Act 1947 and any such proceedings instituted inNorthern Ireland shall be deemed to be civil proceedings within the meaningof that Part of that Act as for the time being in force in Northern Ireland.

(4) If in proceedings under this section the court does not find that fraudis proved but consider that the person concerned is nevertheless liable to apenalty, the court may determine a penalty notwithstanding that, but for theopinion of the Board as to fraud, the penalty would not have been a matter forthe court."

Marginal Citations

M73 1970 c. 9.

168 Amendments consequential on section 167.

(1) In consequence of the amendment made by section 167 above the [M74]Taxes Management Act 1970 shall be amended in accordance withsubsections (2) to (8) below.

(2) In section 20A (power to call for papers of tax accountant)—

(a) in subsection (1), for the words "awarded against him a penalty incurredby" there shall be substituted the words "a penalty imposed on",

(b) in subsection (2), for the word "award" in the first place where itoccurs there shall be substituted the word "penalty" and for that wordin the second place where it occurs there shall be substituted the word "imposition", and

(c) in subsection (4), for the words "award against" there shall besubstituted the words "imposition on" and for the word "award" thereshall be substituted the word "penalty".

(3) In section 53 (summary award of penalties by Commissioners)—

(a) in subsection (1), for the word "awarded" there shall be substitutedthe word "determined" and for the words "for its recovery" thereshall be substituted the words "under section 100C of this Act",

(b) in subsection (2), for the words "award" and "decision" thereshall be substituted the word "determination" and for the word "awarded" there shall be substituted the word "determined", and

(c) in subsection (3), for the word "awarded" there shall be substitutedthe word "determined".

(4) In section 102 (mitigation of penalties), for the words "recoverythereof" there shall be substituted the words "a penalty".

(5) In section 105 (evidence)—

(a) the following paragraph shall be substituted for paragraph (a) ofsubsection (1) —

"(a) pecuniary settlements may be accepted instead of a penalty beingdetermined, or proceedings being instituted, in relation to any tax,",

(b) in paragraph (b) of subsection (2), for the words "sum" onwards thereshall be substituted the words "tax due from him", and

(c) after that paragraph there shall be inserted the words "and

(c) any proceedings for a penalty or on appeal against the determination ofa penalty."

(6) In section 112 (loss of documents etc.), the following subsection shallbe added at the end—

"(3) The references in subsection (1) above to assessments to tax includereferences to determinations of penalties; and in its application to suchdeterminations the proviso to that subsection shall have effect with theappropriate modifications."

(7) In section 113 (form of documents)—

(a) the following subsection shall be inserted after subsection (1C)—

"(1D) Where an officer of the Board has decided to impose a penalty undersection 100 of this Act and has taken all other decisions needed for arrivingat the amount of the penalty, he may entrust to any other officer of the Boardresponsibility for completing the determination procedure, whether by meansinvolving the use of a computer or otherwise, including responsibility forserving notice of the determination on the person liable to the penalty."and

(b) in subsection (3)—

(i) after the words "Every assessment," there shall be inserted the words "determination of a penalty,",

(ii) after the words "notice of assessment" there shall be inserted thewords ", of determination", and

(iii) after the words "levying tax" there shall be inserted the words "ordetermining a penalty".

(8) In paragraph 5 of Schedule 3 (rules for assigning proceedings toCommissioners), for the words "section 100(4)" there shall be substitutedthe words "section 100C or an appeal under section 100B against thedetermination of a penalty".

(9) In section 41 of the [M75]Development Land Tax Act 1976(administration of development land tax) the following subsection shall beinserted after subsection (1)—

"(1A) Nothing in sections 167 to 169 of the Finance Act 1989 shall apply topenalties relating to development land tax."

Marginal Citations
M74 1970 c.9.
M75 1976 c. 24.

169 Time limits.

(1) The following section shall be substituted for section 103 of the [M76]Taxes Management Act 1970—

"**103 Time limits for penalties.**

(1) Subject to subsection (2) below, where the amount of a penalty is to beascertained by reference to tax payable by a person for any period, thepenalty may be determined by an officer of the Board, or proceedings for thepenalty may be commenced before the Commissioners or a court—

(a) at any time within six years after the date on which the penalty wasincurred, or

(b) at any later time within three years after the final determination of theamount of tax by reference to which the amount of the penalty is to beascertained.

(2) Where the tax was payable by a person who has died, and the determinationwould be made in relation to his personal representatives, subsection (1)(b)above does not apply if the tax was charged in an assessment made later thansix years after the end of the chargeable period for which it was charged.

(3) A penalty under section 99 of this Act may be determined by an officer ofthe Board, or proceedings for such a penalty may be commenced before a court,at any time within twenty years after the date on which the penalty wasincurred.

(4) A penalty to which neither subsection (1) nor subsection (3) above appliesmay be so determined, or proceedings for such a penalty may be commencedbefore the Commissioners or a court, at any time within six years after thedate on which the penalty was incurred or began to be incurred."

(2) The amendment made by subsection (1) above shall not affect theapplication of section 103(4) of the [M77]Taxes Management Act1970 to proceedings under section 100 of that Act as it has effect before theamendment made by section 167 above.

Marginal Citations
M76 1970c. 9.
M77 1970 c. 9.

170 Up-rating of certain penalties.

(1) In section 23(8) of the Taxes Act 1988 (maximum penalty for agents failingto make certain payments on behalf of principals), for "£50" thereshall be substituted "£300".

(2) In section 234(4) of that Act (penalty for failure to comply withprovisions as to explanation of deduction from dividends etc.), for "£10" and "£100" there shall be substituted respectively "£60" and "£600".

(3) In section 306(6) of that Act (maximum penalty for false certificates orstatements relating to investment in corporate trades), for the words "£250 or, in the case of fraud, £500" there shall besubstituted "£3,000".

(4) In—

(a) section 619(7) of that Act (maximum penalty for false statements orrepresentations relating to relief for qualifying premiums),

(b) section 653 of that Act (maximum penalty for statements or representationsabout personal pension schemes), and

(c) section 658(5) of that Act (maximum penalty for false statements orrepresentations relating to purchased life annuities),

for "£500" there shall be substituted "£3,000".

(5) In paragraph 2(4) of Schedule 19A to that Act and Schedule 16A to the [M78]Finance Act 1973 (maximum penalty for incorrect return byLloyd's agent), for the words "£500 in the case of fraud and£250 in the case of negligence" there shall be substituted "£3,000".

(6) This section shall apply in relation to things done or omitted on or afterthe day on which this Act is passed.

Marginal Citations

M78 1973 c. 51.

Status:
Point in time view as at 25/07/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 1989, Part II.