



# 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.

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**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

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- (b) in subsection (5) (age allowance withdrawn by two-thirds of amount by which income exceeds a specified limit) for “two-thirds” there shall be substituted “one half”.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 <sup>M1</sup>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”.
- [<sup>F1</sup>(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 <sup>F2</sup>. . . [<sup>F3</sup>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.”.
- [<sup>F4</sup>(11) In section 257E(1)(b) for “80” there shall be substituted “75”.
- <sup>F4</sup>(12) In section 257E(2)(a) for “£3,180” there shall be substituted “£3,400”.

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<sup>F4</sup>(13) In section 257E(2)(b) for “£3,310” there shall be substituted “£3,540”.]

#### Textual Amendments

- F1** S. 33(6) repealed (27.7.1999 with effect for the year 2000-2001 and subsequent years of assessment) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, note 2
- F2** Words in s. 33(10) repealed (16.7.1992) by virtue of **Finance (No. 2) Act 1992 (c. 48)**, ss. 20, 82, **Sch. 5 para. 10, Sch. 18 Pt. VII(1)**
- F3** Words in s. 33(10) repealed (27.7.1999 with effect for the year 2000-2001 and subsequent years of assessment) by virtue of 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, note 2
- F4** S. 33(11)-(13) repealed (27.7.1999 with effect for the year 2000-2001 and subsequent years of assessment) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, note 2

#### 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 and Corporation Taxes Act 1988 (c. 1, SIF 63:1)**, 257–257E 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—
- the small companies' rate shall be 25 per cent., and
  - 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)—
- for “£100,000” there shall be substituted “£150,000”, and
  - 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 13 of 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.

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**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 section 19(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.

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### **37 Schedule E: assessment on receipts basis.**

- (1) The following sections shall be inserted immediately before section 203 of 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

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known until the amount is determined after the period has ended, the time when the amount is determined.

- (2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
- (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
- (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
- (5) In subsection (1) above “director” means—
  - (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company.
- (6) In subsection (1) above “director”, in relation to a company, also includes any person in accordance with whose directions or instructions the company’s directors (as defined in subsection (5) above) are accustomed to act; and for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company’s directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.
- (7) Subsections (1) to (6) above shall have effect subject to subsections (8) to (11) below.
- (8) In a case where section 141(1)(a), 142(1)(a), 143(1)(a) or 148(4) treats a person as receiving or being paid an emolument or emoluments at a particular time, for the purposes of section 202A(1)(a) the emolument or emoluments shall be treated as received at that time; and in such a case subsections (1) to (6) above shall not apply.
- (9) In a case where section 145(1) treats a person as receiving emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the period referred to in section 145(1); and in such a case subsections (1) to (6) above shall not apply.
- (10) In a case where section 154(1), 157(1), 158(1), 160(1), 160(2), 162(6) or 164(1) treats an amount as emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the year referred to in section 154(1) or the other provision concerned; and in such a case subsections (1) to (6) above shall not apply.
- (11) In a case where—
  - (a) emoluments take the form of a benefit not consisting of money, and
  - (b) subsection (8), (9) or (10) above does not apply,
 for the purposes of section 202A(1)(a) the emoluments shall be treated as received at the time when the benefit is provided; and in such a case subsections (1) to (6) above shall not apply.”

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- (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) before 1989-90,
  - (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 April 1991;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 6th April 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

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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) before 1989-90,
  - (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 Act 1988, 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 36 above.
- (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 of that 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 36 above.



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- (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 year 1989-90.

#### **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 section 597 of that Act (retirement benefit schemes);
  - (e) a benefit chargeable to income tax under Schedule E by virtue of section 617(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.
- [<sup>F5</sup>(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.

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### Textual Amendments

**F5** S. 42(4) repealed (19.3.1997 with effect as mentioned in Sch. 18 Pt. VI(3), notes 1, 2 of the amending Act) by 1997 c. 16, ss. 61(2)(3), 113, **Sch. 18 Pt. VI(3)**

## 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.
- <sup>F6</sup>(6) .....
- <sup>F6</sup>(7) .....
- (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 for which an account is made up.

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- (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.

#### Textual Amendments

- F6** S. 43(6)(7) repealed (27.7.1993 with effect in relation to periods of account ending on or after 30.6.1993) by 1993 c. 34, ss. 181, 184(3), 213, **Sch. 23 Pt. III(12)** Note 3

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

- C8** S. 43 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**)  
S. 43 excluded (31.7.1998) by 1998 c. 36, s. 38, **Sch. 5 Pt. IV paras. 66(2), 69**

## 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,

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- (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.

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- (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)**

- C9** 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.

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- (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

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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 Act 1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.
- (5) In subsection (4) above “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.
- (6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—
  - (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates, has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 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

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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



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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 <sup>2</sup>

(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,

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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.

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- (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, 143 or 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.

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- (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) and 165(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 “section 167)” 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 <sup>M2</sup>Taxes Management Act 1970.

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#### Marginal Citations

M2 1970 c. 9.

### *Medical insurance*

#### [<sup>F7</sup>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 contract insures—
  - (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.

[ In a case where—

- <sup>F8</sup>(2A) (a) a payment is made in respect of a premium under a contract at a time when the contract meets the requirement in subsection (2) above by virtue of paragraph (c) of that subsection, and
- (b) a payment is made under the same contract at a time after one of the individuals has died and when the contract does not (apart from this subsection) meet the requirement in subsection (2) above by virtue only of the fact that the surviving spouse is not aged 60 or over at the time,

for the purposes of subsection (2) above in its application to the contract the surviving spouse shall be deemed to be aged 60 or over at the time mentioned in paragraph (b) above.]

- (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 of the individuals insured by the contract) [<sup>F9</sup>the individual shall be entitled to relief under this subsection in respect of the payment; and (except where subsections (4) to (6) below apply) relief under this subsection shall be given—
  - (a) in accordance with subsections (3A) to (3C) below, and
  - (b) only on a claim made for the purpose.]

[ Where an individual is entitled to relief under subsection (3) above in respect of one <sup>F10</sup>(3A) or more payments made in a given year of assessment, the amount of his liability for

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that year of assessment to income tax on his total income shall be the amount to which he would be liable apart from this section less whichever is the smaller of—

- (a) the amount found under subsection (3B) below, and
- (b) the amount which reduces his liability to nil.

- (3B) The amount referred to in subsection (3A)(a) above is an amount found by—
- (a) taking the amount of the payment referred to in subsection (3A) above or (as the case may be) the aggregate amount of the payments there referred to, and
  - (b) finding an amount equal to tax on the amount taken under paragraph (a) above at the basic rate for the year of assessment concerned.
- (3C) In determining for the purposes of subsection (3A) above the amount of incomers on whom he would be liable apart from this section, no account shall be taken of—
- (a) any income tax reduction under Chapter I of Part VII of the Taxes Act 1988 or under section 347B of that Act;
  - (b) any income tax reduction under section 353(1A) of the Taxes Act 1988;
  - (c) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 of the Taxes Act 1988 or by way of a credit under section 790(1) of that Act;
  - (d) any tax at the basic rate on so much of that person's income as is income the tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.]
- (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 [<sup>F11</sup>in accordance with regulations], 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

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- (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.]

#### Textual Amendments

- F7** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))
- F8** S. 54(2A) inserted (3.5.1994 with effect as mentioned in **Sch. 10 para. 4(2)** of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 4(1)**
- F9** Words and paras. (a)(b) substituted for words in s. 54(3) (3.5.1994 with effect in relation to payments on or after 6.4.1994) by 1994 c. 9, s. 83, **Sch. 10 para. 2(2)(4)**
- F10** S. 54(3A)-(3C) inserted (3.5.1994 with effect in relation to payments on or after 6.4.1994) by 1994 c. 9, s. 83, **Sch. 10 para. 2(3)(4)**
- F11** Words in s. 54(6)(b) inserted (29.4.1996) by 1996 c. 8, s. 129(2)

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

- C10** S. 54 restricted (31.7.1997 with effect for the year 1997-1998 and subsequent years of assessment) by 1997 c. 58, s. 17(1)-(5) (with s. 3(3))
- C11** For regulations see S.I. 1989/2387 and S.I. 1989/2389 (in Part III Vol. 5 under "Private medical insurance")

#### [<sup>F12</sup>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 54 above.
- (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),
- [ at the relevant time the contract satisfies the conditions set out in
- <sup>F13</sup>(ba) subsection (2A) below,
- (bb) the contract is not one in the case of which subsection (2D) below applies,]
- (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, [<sup>F14</sup>and]
- (d) no benefit has been provided by virtue of the contract other than an approved benefit, [<sup>F15</sup>and
- (e) the contract meets one or more of the three conditions set out below.]

[ The conditions referred to in subsection (2)(ba) above are that—

- <sup>F16</sup>(2A) (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,

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

(2B) In a case where—

- (a) at the relevant time the contract confers a material right, or more than one such right, but
- (b) the total cost to the insurer of providing benefits in pursuance of the material right or (as the case may be) in pursuance of all the material rights would not exceed the prescribed sum,

the contract shall not thereby be regarded as failing to satisfy at the relevant time the condition set out in subsection (2A)(b) above.

(2C) For the purposes of subsection (2B) above a material right is a right which—

- (a) is not a right such as is mentioned in subsection (2A)(a) above or such as is for the time being specified in regulations made under subsection (2A)(b) above, and
- (b) is not a right to a cash benefit.

(2D) This subsection applies in the case of a contract (the main contract) if—

- (a) at least one other contract is entered into which is a contract (a collateral contract) under which a benefit is provided in consideration of the insured's entering into the main contract, and
- (b) the cost to the insurer of fulfilling his obligations under the collateral contract (or, if there is more than one collateral contract, of fulfilling his obligations under all of them) exceeds the prescribed sum.]

[ The first condition is that the contract is certified by the Board under section 56 below <sup>F17</sup>(3) at the relevant time.

<sup>F17</sup>(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.

<sup>F17</sup>(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.

<sup>F17</sup>(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,



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- (b) either of them was entered into with reference to the other, or with a view 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 <sup>M3</sup>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 subsection (2A)(a) above, or
- <sup>F18</sup>(a) (b) for the time being specified in regulations made under subsection (2A)(b) above.]
- [ For the purposes of this section a benefit is also an approved benefit if it is not a cash
- <sup>F19</sup>(10) benefit and—
- (a) it is a single benefit provided otherwise than as mentioned in subsection (9) above and the cost to the insurer of providing it does not exceed the prescribed sum, or
- (b) it is one of a number of benefits provided otherwise than as mentioned in subsection (9) above and the total cost to the insurer of providing the benefits does not exceed the prescribed sum.
- (11) 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.
- (12) For the purposes of this section the prescribed sum is £30.
- (13) The Treasury may by order substitute for the sum for the time being specified in subsection (12) above such sum as may be specified in the order; and any such substitution shall have effect in relation to cases where the relevant time falls on or after such date as is specified in the order.]]

#### Textual Amendments

- F12** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))
- F13** S. 55(2)(ba)(bb) inserted (3.5.1994 with effect as mentioned in **Sch. 10 para. 5(8)** of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(2)**
- F14** Word in s. 55(2)(c) inserted (3.5.1994 with effect as mentioned in **Sch. 10 para. 5(8)** of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(3)(a)**

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- F15** S. 55(2)(e) and the word “and” immediately preceding it repealed (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, ss. 83, 258, Sch. 10 para. 5(3)(b), **Sch. 26 Pt. V(3)**, Note 2
- F16** S. 55(2A)-(2D) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(4)**
- F17** S. 55(3)-(6) repealed (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, ss. 83, 258, Sch. 10 para. 5(5), **Sch. 26 Pt. V(3)**, Note 2
- F18** Paras. (a)(b) substituted for words in s. 55(9) (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(6)**
- F19** S. 55(10)-(13) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(7)**

#### Marginal Citations

- M3** 1982 c.50.

#### [<sup>F20</sup>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 shall take 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.

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- (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.]

#### Textual Amendments

**F20** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))

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

**C12** For regulations see **S.I. 1989/2389** (in Part III Vol. 5 under “Private medical insurance”)

### [<sup>F21</sup>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 in such form and manner, shall be made at such time, and shall be accompanied by such documents, as may be prescribed;
  - [<sup>F22</sup>(aa) make provision for and with respect to appeals against a decision of an officer of the Board or the Board with respect to a claim under section 54(6)(b) above;]
  - (b) make provision, in relation to payments in respect of which a person is entitled to relief under section 54 above, for the giving by insurers in such circumstances as may be prescribed of certificates of payment in such form as may be prescribed to such persons as may be prescribed;
  - (c) provide that a person who provides (or has at any time provided) insurance under contracts of private medical insurance shall comply with any notice which is served on him by the Board and which requires him within a prescribed period to make available for the Board’s inspection documents (of a prescribed kind) relating to 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, furnish to the Board information (of a prescribed kind) about contracts of private medical insurance;
  - (e) make provision with respect to the approval of insurers for the purposes of section 55 above and the withdrawal of approval for the purposes of that section;
  - (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 the purposes of section 55 above;
  - (g) make provision with respect to the certification by the Board of standard forms of eligible contract and variations from standard forms of eligible contract certified by them;
  - (h) make provision for and with respect to appeals against decisions of the Board 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, under section 56 above shall be carried out in such form and manner as may be prescribed;

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- (j) make provision with respect to appeals against decisions of the Board with respect to certification or the revocation of certification under section 56 above;
  - (k) make provision generally as to administration in connection with sections 54 to 56 above.
- (2) The words “ Regulations under section 57 of the Finance Act 1989 ” shall be added at the end of each column in the Table in section 98 of the <sup>M4</sup>Taxes Management Act 1970 (penalties for failure to furnish information etc.)
- (3) The following provisions of the Taxes Management Act 1970, namely—
- <sup>F23</sup>(a) [ section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to (10) of that Act;]
  - (b) section 30 (tax repaid in error etc.) [<sup>F24</sup>apart from subsection (1B)],
  - (c) [<sup>F25</sup>section 86] (interest), and
  - (d) section 95 (incorrect return or accounts),
- [<sup>F26</sup>shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable by virtue of section 54(6)(b) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid as respects a chargeable period as a relief which was not due.]
- [ In the application of section 86 of the Taxes Management Act 1970 by virtue of <sup>F27</sup>(3A) subsection (3) above in relation to sums due and payable by virtue of an assessment made under section 29(1)(c) or 30 of that Act, as applied by that subsection, the relevant date—
- (a) in a case where the person falling within section 54(6) above has made any interim claim, within the meaning of regulations made under subsection (1) and section 54(4) above, as respects some part of the year of assessment for which the assessment is made, is 1st January in that year of assessment; and
  - (b) in any other case, is the later of the following dates, that is to say—
    - (i) 1st January in the year of assessment for which the assessment is made; or
    - (ii) the date of the making of the payment by the Board which gives rise to the assessment.]
- (4) In sections <sup>F28</sup> . . . 257D(8) and 265(3) of the Taxes Act 1988 after paragraph (c) there shall be inserted
- (d) on account of any payments to which section 54(5) of the Finance Act 1989 applies”.
- (5) In subsection (1) above—
- “eligible contract” has the meaning given by section 55 above, and
  - “prescribed” means prescribed by or, in relation to form, under the regulations.]

#### Textual Amendments

**F21** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))

**F22** S. 57(1)(aa) inserted (29.4.1996) by 1996 c. 8, s. 129(3)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- F23** S. 57(3)(a) substituted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(a)**
- F24** Words in s. 57(3)(b) inserted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(b)**
- F25** Words in s. 57(3)(c) substituted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(c)**
- F26** Words in s. 57(3) substituted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(d)**
- F27** S. 57(3A) inserted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(3)**
- F28** Words in s. 57(4) repealed (16.7.1992) by virtue of Finance (No. 2) Act 1992 (c. 48), ss. 20, 82, Sch. 5 para. 10, **Sch. 18 Pt. VII(1)**

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

- C13** See S.I. 1989/2387

**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.

<sup>F29</sup>59 .....

**Textual Amendments**

- F29** S. 59 repealed (28.7.2000 with effect as mentioned in s. 41(9) of the amending Act) by 2000 c. 17, ss. 41(7), 156, **Sch. 40 Pt. II(1)**, note 3

**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”.

<sup>F30</sup>(3) .....

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- (4) Subsection (1) above shall apply in relation to accounting periods ending on or after 14th March 1989, and [<sup>F31</sup>subsection (2)] above shall apply to payments due on or after that day.

**Textual Amendments**

**F30** S. 60(3) repealed (1.5.1995 with effect as mentioned in s. 74(2), [Sch. 29 Pt. VIII\(8\)](#) of the amending Act) by 1995 c. 4, ss. 74(1), 162, [Sch. 17 Pt. III para. 25](#), [Sch. 29 Pt. VIII\(8\)](#)

**F31** Words in s. 60(4) substituted (1.5.1995 with effect as mentioned in s. 74(2) of the amending Act) by 1995 c. 4, s. 74, [Sch. 17 Pt. III para. 25](#)

*Profit-related pay, share schemes etc.*

**[<sup>F32</sup>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.]

**Textual Amendments**

**F32** S. 61 repealed (19.3.1997 with effect as mentioned in Sch. 18 Pt. VI(3), notes 1, 2 of the amending Act) by 1997 c. 16, ss. 61(2)(3), 113, [Sch. 18 Pt. VI\(3\)](#)

**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.

<sup>F33</sup>(2) .....

- (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.

**Textual Amendments**

**F33** S. 62(2) repealed (1.9.1991) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), ss. 40, 123, [Sch. 19 Pt. V Note 10](#); [S.I. 1991/1741](#), [art. 2](#)

**<sup>F34</sup>63 Profit sharing schemes.**

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### Textual Amendments

**F34** 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 <sup>M5</sup>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—

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“(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 the trustees 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 [<sup>F35</sup>profits] of a trade carried on by the company, or



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- (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 section 840 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).

#### Textual Amendments

**F35** Words in s. 67(2)(a) substituted (31.7.1998) by 1998 c. 36, s. 46(3), Sch. 7 para. 3

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

**C14** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share 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 [<sup>F36</sup>the rate applicable to trusts] for the year of assessment in which the event occurs.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (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.

#### **Textual Amendments**

**F36** Words in s. 68(2)(c) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.20, **25(1)**

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

**C15** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

## **69 Chargeable events.**

- (1) For the purposes of section 68 above each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) the transfer of securities by the trustees, if the transfer is not a qualifying transfer;
  - (b) the transfer of securities by the trustees to persons who are at the time of the transfer beneficiaries under the terms of the trust deed, if the terms on which the transfer is made are not qualifying terms;
  - (c) the retention of securities by the trustees at the expiry of the [<sup>F37</sup>qualifying period] beginning with the date on which they acquired them;

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- (d) the expenditure of a sum by the trustees for a purpose other than a qualifying purpose.
- [<sup>F38</sup>(e) where—
- (i) the trustees make a qualifying transfer within subsection (3AA) below for a consideration, and
  - (ii) they do not, during the period specified in subsection (5A) below, expend a sum of not less than the amount of that consideration for one or more qualifying purposes,
- the expiry of that period.]
- (2) For the purposes of subsection (1)(a) above a transfer is a qualifying transfer if it is made to a person who at the time of the transfer is a beneficiary under the terms of the trust deed.
- (3) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—
- (a) it is made to the trustees of a scheme which at the time of the transfer is 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 the securities might reasonably be expected to fetch on a sale in the open market.
- [<sup>F39</sup>(3AA) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—
- (a) it is a transfer of relevant shares made to the trustees of the plan trust of an employee share ownership plan,
  - (b) the plan is approved under Schedule 8 to the Finance Act 2000 when the transfer is made, and
  - (c) the consideration (if any) for which the transfer is made does not exceed the market value of the shares.
- (3AB) For the purpose of determining whether a transfer by the trustees is a qualifying transfer within subsection (3AA) above, where on or after 21st March 2000—
- (a) the trustees transfer or dispose of part of a holding of shares (whether by way of a qualifying transfer or otherwise), and
  - (b) the holding includes any relevant shares,
- the relevant shares shall be treated as transferred or disposed of before any other shares included in that holding.
- For this purpose “holding” means any number of shares of the same class held by the trustees, growing or diminishing as shares of that class are acquired or disposed of.
- (3AC) For the purposes of subsections (3AA) and (3AB) above—
- “market value” has the same meaning as in Schedule 8 to the Finance Act 2000; and
  - “relevant shares” means—
- (i) shares that are held by the trustees of the employee share ownership trust at midnight on 20th March 2000, and
  - (ii) shares purchased by those trustees with original funds after that time.
- (3AD) For the purposes of subsection (3AC) above—
- (a) “original funds” means any money held by the trustees of the employee share ownership trust in a bank or building society account at midnight on 20th March 2000, and

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- (b) any payment made by the trustees after that time (whether to acquire shares or otherwise) shall be treated as made out of original funds (and not out of money received after that time) until those funds are exhausted.]

[<sup>F40</sup>(3A) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if it is made by way of exchange in circumstances mentioned in section 85(1) of the Capital Gains Tax Act 1979 or section 135(1) of the Taxation of Chargeable Gains Act 1992.]

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

- (a) all the securities transferred at the same time [<sup>F41</sup>other than those transferred on a transfer such as is mentioned in subsection (4ZA) below] are transferred on similar terms,  
 (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed [<sup>F42</sup>by virtue of a rule which conforms with paragraph 4(2), (3) or (4) of Schedule 5 to this Act] when the transfer is made, and  
 (c) securities are transferred to all such [<sup>F43</sup>persons] who have accepted.

[<sup>F44</sup>(4ZA) For the purposes of subsection (1)(b) above a transfer of securities is also made on qualifying terms if—

- (a) it is made to a person exercising a right to acquire shares, and  
 (b) that right was obtained in accordance with the provisions of a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—  
     (i) which was established by, or by a company controlled by, the company which established the trust, and  
     (ii) which is approved under that Schedule, and  
 (c) that right is being exercised in accordance with the provisions of that scheme, and  
 (d) the consideration for the transfer is payable to the trustees.]

[<sup>F45</sup>(4A) For the purposes of subsection (1)(c) above the qualifying period is—

- (a) seven years, in the case of trusts established on or before the day on which the Finance Act 1994 was passed;  
 (b) twenty years, in the case of other trusts;

and for this purpose a trust is established when the deed under which it is established is executed.]

- (5) For the purposes of subsection (1)(d) [<sup>F46</sup>or (e)] 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.

[<sup>F47</sup>(5A) The period referred to in paragraph (e) of subsection (1) above is the period—

- (a) beginning with the qualifying transfer mentioned in that paragraph, and  
 (b) ending nine months after the end of the period of account in which that qualifying transfer took place.

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For this purpose the period of account means the period of account of the company that established the employee share ownership trust.]

- (6) For the purposes of subsection (4) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.
- (7) In ascertaining for the purposes of this section whether particular securities are retained, securities acquired earlier by the trustees shall be treated 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 the exceptions in subsection (9) below);
  - (b) transfer securities to another person when that other becomes entitled to them;
  - (c) retain securities if they remain entitled to them.
- (9) The exceptions are these—
- (a) if securities are issued to trustees in exchange in circumstances mentioned in section [F48 135(1) of the Taxation of Chargeable Gains Act 1992], they shall be treated as having acquired them when they became entitled to 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 the original shares which those securities represent (construing “reorganisation” and “original shares” in accordance with section [F48 126] of that Act).
- (10) If trustees agree to take a transfer of securities, for the purposes of this section they shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (11) If trustees agree to transfer securities to another person, for the purposes of this section the other person shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (12) For the purposes of this section the following are securities—
- (a) shares;
  - (b) debentures.

#### Textual Amendments

- F37** Words in s. 69(1)(c) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(2)**
- F38** S. 69(1)(e) inserted (28.7.2000) by 2000 c. 17, s. 55(2)
- F39** S. 69(3AA)-(3AD) inserted (28.7.2000) by 2000 c. 17, s. 55(3)
- F40** S. 69(3A) inserted (16.7.1992, the amending provision applying in relation to exchanges made on or after 1.1.1992) by Finance (No. 2) Act 1992 (c. 48), s. 36(1)(2)
- F41** Words in s. 69(4)(a) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(a)
- F42** Words in s. 69(4)(b) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(b)
- F43** Word in s. 69(4)(c) substituted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(c)

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- F44** S. 69(4ZA) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(4)
- F45** S. 69(4A) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(3)**
- F46** Words in s. 69(5) inserted (28.7.2000) by 2000 c. 17, s. 55(4)
- F47** S. 69(5A) inserted (28.7.2000) by 2000 c. 17, s. 55(5)
- F48** Words in s. 69(9) substituted (in relation to tax for the year 1992-1993 and subsequent years subject as mentioned in s. 289 of the substituting Act) by **Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 19(1)** (with s. 60, 101(1), 171, 201(3))

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

- C16** See **Finance Act 1990 (c. 29)** ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*
- C17** Definition employed for purposes of **Finance Act 1990 (c. 29)** s. 36—*roll-over relief where replacement asset owned*

**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 [<sup>F49</sup>**Taxation of Chargeable Gains Act 1992**], the chargeable amount is an amount equal to the sums allowable under section [<sup>F49</sup>38(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.
- [<sup>F50</sup>(4) If the chargeable event falls within section 69(1)(e) above the chargeable amount is an amount equal to—
- (a) the amount of the consideration received for the qualifying transfer mentioned in section 69(1)(e) above, less
- (b) the amount of any expenditure by the trustees for a qualifying purpose during the period mentioned in section 69(5A) above.]

**Textual Amendments**

- F49** Words in s. 70(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by **Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 19(2)** (with ss. 60, 101(1), 201(3))
- F50** S. 70(4) inserted (28.7.2000) by 2000 c. 17, s. 55(6)

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

- C18** See **Finance Act 1990 (c. 29)** ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

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*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

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## **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 [<sup>F51</sup>the rate applicable to trusts] 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—

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- (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.

#### **Textual Amendments**

**F51** Words in s. 71(4)(c) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.20, 25(1)

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

**C19** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share 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.



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- (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)**

**C20** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share 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.

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- (9) In the Table in section 98 of the <sup>M6</sup>Taxes Management Act 1970 (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)**

**C21** See Finance Act 1990 (c. 29) ss.31–40—.roll-over relief for disposal of assets to employee share ownership trusts

**Marginal Citations**

**M6** 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)**

**C22** See Finance Act 1990 (c. 29) ss.31–40—.roll-over relief for disposal of assets to employee share 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 [<sup>F52</sup>profits] 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) [<sup>F53</sup>Subject to subsection (6A) below, 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) [<sup>F53</sup>Subject to subsection (6A) below, 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

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- (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 [<sup>F52</sup>profits] 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) [<sup>F53</sup>Subject to subsection (6A) below, 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) [<sup>F53</sup>Subject to subsection (6A) below, 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.
- [<sup>F54</sup>(6A) Expenses to which subsection (6B) or (6C) below applies shall be treated as not falling within any of subsections (2), (3), (5) or (6) above.
- (6B) This subsection applies to expenses of paying any sum, or of providing benefits, pursuant to a superannuation fund which satisfies the requirements of section 615(6) of the Taxes Act 1988.
- (6C) This subsection applies to expenses of paying any sum, or of providing benefits, pursuant to a retirement benefits scheme which is established outside the United Kingdom and which the Board are satisfied corresponds to such a scheme as is mentioned in paragraphs (a), (b) or (c) of section 596(1) of the Taxes Act 1988, where the expenses are incurred for the benefit of:
  - (a) employees whose emoluments are foreign emoluments within the meaning of section 192 of the Taxes Act 1988; or
  - (b) employees who are not resident in the United Kingdom and whose duties are performed wholly outside the United Kingdom (and for this purpose duties performed in the United Kingdom the performance of which is merely incidental to the performance of other duties outside the United Kingdom shall be treated as performed outside the United Kingdom).]
- (7) 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 section 596(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.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

- F52** Words in s. 76(1)(4)(a) substituted (31.7.1998) by 1998 c. 36, s. 46(3), **Sch. 7 para. 3**
- F53** Words in s. 76(2)(3)(5)(6) substituted (29.4.1996 with effect as mentioned in **Sch. 39 para. 2(4)** of the amending Act) by 1996 c. 8, s. 201, **Sch. 39 Pt. I para. 2(2)**
- F54** S. 76(6A)-(6C) inserted (29.4.1996 with effect as mentioned in **Sch. 39 para. 2(4)** of the amending Act) by 1996 c. 8, s. 201, **Sch. 39 Pt. I para. 2(3)**

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

- C23** S. 76 applied (31.7.1998 with effect as mentioned in s. 38(2)(3) of the 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**)

**77 Personal pension schemes.**

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

*Unit trusts etc.*

**78, 79.** ..... <sup>F55</sup>

**Textual Amendments**

- F55** Ss. 78, 79 repealed by Finance Act 1990 (c. 29, SIF 58), s.132, **Sch. 19 Pt. IV Note**

<sup>F56</sup>**80** .....

**Textual Amendments**

- F56** S. 80 repealed (31.7.1998) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(23)**

**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 <sup>M7</sup> 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**

- M7** 1979 c. 14.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

### *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 [<sup>F57</sup>are allocated to, [<sup>F58</sup>and any amounts of tax <sup>F59</sup>. . . 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 [<sup>F60</sup>the return deposited with the Financial Services Authority under section 9.6 of the Prudential Sourcebook (Insurers)], 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.

[<sup>F61</sup>(1A) In subsection (1)(b) above “the Prudential Sourcebook (Insurers)” means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000.]

(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”).

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- (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

- F57** *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”
- F58** *Words*  
 “any any amounts of tax which are expended on behalf of”  
*omitted when s.82(1)(2)(4) and s. 83 applied to profits chargeable under Schedule D (see [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#) s. 441 (as amended (28.7.2000 with effect in relation to periods of account beginning on or after 1.4.2000) by [2000 c. 17, s. 103, Sch. 30 para. 18\(3\)\(4\)](#))*
- F59** Words in [s. 82\(1\)\(a\)](#) repealed (28.7.2000 with effect in relation to periods of account beginning on or after 1.4.2000) by [2000 c. 17, ss. 103, 156, Sch. 30 para. 18\(2\)\(4\), Sch. 40 Pt. II\(13\)](#), Note
- F60** Words in [s. 82\(1\)\(b\)](#) substituted (1.12.2001 with effect as mentioned in s. 55(4) of the amending S.I.) by [S.I. 2001/3629, art. 55\(2\)](#)
- F61** [S. 82\(1A\)](#) inserted (1.12.2001 with effect as mentioned in s. 55(4) of the amending S.I.) by [S.I. 2001/3629, art. 55\(3\)](#)

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

- C24** [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](#)
- C25** [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](#))*

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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))  
**C26** See S.I. 1989/2417, reg. 5 (in Part III Vol.5) for modification applicable to life or 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).

### [<sup>F62</sup>83 Receipts to be brought into account.

- (1) The following provisions of this section have effect 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.
- (2) So far as referable to that business, the following items, as brought into account for a period of account (and not otherwise), shall be taken into account as receipts of the period—
  - (a) the company's investment income from the assets of its [<sup>F63</sup>long-term insurance] fund, and
  - (b) any increase in value (whether realised or not) of those assets.

If for any period 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 be taken into account as an expense of that period.

[ In ascertaining whether or to what extent a company has incurred a loss in respect

- <sup>F64</sup>(3) of that business in a case where an amount is added to the company's [<sup>F63</sup>long-term insurance] fund as part of or in connection with—
- (a) a transfer of business to the company, or
  - (b) a demutualisation of the company not involving a transfer of business,
- that amount shall (subject to subsection (4) below) be taken into account, for the period for which it is brought into account, as an increase in value of the assets of that fund within subsection (2)(b) above.

<sup>F64</sup>(4) Subsection (3) above does not apply where, or to the extent that, the amount concerned—

- (a) would fall to be taken into account as a receipt apart from this section,
- (b) is taken into account under subsection (2) above otherwise than by virtue of subsection (3) above, or
- (c) is specifically exempted from tax.

<sup>F64</sup>(5) Any amount which is to be taken into account pursuant to subsection (3) above for a period of account shall be so taken into account—

- (a) after the making of any reduction under subsection (6) of section 83AA below in relation to that period, but
- (b) before the making of any reduction under subsection (3) of that section in relation to an accounting period of the company ending in or with that period.

<sup>F64</sup>(6) In subsection (3) above “transfer of business” means—

- [ a transfer, under an insurance business transfer scheme, of business which
- <sup>F65</sup>(a) consists of the effecting or carrying out of contracts of long-term insurance;]
- (b) a qualifying overseas transfer, within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act 1988; or

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- (c) the making of a contract of reinsurance which, in whole or in part, constitutes or forms part of a total reinsurance by the reinsured, unless the reinsurer under the contract falls within section 439A of the Taxes Act 1988 (pure reinsurance).

[ In subsection (6)(a) above—

<sup>F66</sup>(6A)

“insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000, including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section;

“contracts of long-term insurance” means contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]

- (7) For the purposes of subsection (3)(a) above, a transfer of business falling within subsection (6)(c) above shall be treated as a transfer of business to the company which is the reinsurer under the contract of reinsurance.

<sup>F64</sup>(8) In this section—

“add”, in relation to an amount and a company’s [<sup>F67</sup>long-term insurance] fund, includes transfer (whether from other assets of the company or otherwise);

“demutualisation” means the conversion, under the law of any territory, of a company which has been carrying on insurance business without having a share capital into a company with a share capital, without any change of legal personality;

“total reinsurance” means the reinsurance (whether effected by a single contract of reinsurance or by two or more such contracts, taken together, whether or not made with the same reinsurer) of the whole, or substantially the whole, of the reinsured’s risk—

- (a) under policies of a particular description issued in respect of insurances made in the course of carrying on life assurance business before the making of the contract of reinsurance (or, in a case where there are two or more contracts of reinsurance, the last of them); or
- (b) under contracts of a particular description so made.]

This subsection does not apply where, or to the extent that, the amount concerned—

- (a) would fall to be taken into account as a receipt apart from this section,  
 (b) is otherwise taken into account under subsection (2) above, or  
 (c) is specifically exempted from tax.]

#### Textual Amendments

**F62** 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)**)

**F63** Words in s. 83(2)(a)(3) substituted (1.12.2001) by S.I. 2001/329, **art. 60(1)(a)**

**F64** S. 83(3)-(8) substituted for s. 83(3) (29.4.1996 with effect as mentioned in **Sch. 31 para. 10(2)** of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 4**

**F65** S. 83(6)(a) substituted (1.12.2001 with effect as mentioned in art. 56(4) of the amending S.I.) by S.I. 2001/3629, **art. 56(2)**



*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- F66** S. 83(6A) inserted (1.12.2001 with effect as mentioned in art. 56(4) of the amending S.I.) by S.I. 2001/3629, **art. 56(3)**
- F67** Words in the definition of “add” in s. 83(8) substituted (1.12.2001) by S.I. 2001/3629, **art. 60(1)(a)**

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

- C27** S. 83 applied (1.5.1995) by 1988 c. 1, s. 439B(3)(a) (as inserted (1.5.1995) by 1995 c. 4, s. 51, Sch. 8 Pt. I para. 27(1) (with Sch. 8 paras. 55(2), 57(1)))  
S. 83 modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2), 33, 34**
- C28** S. 83(2) applied (1.5.1995) by 1998 c. 1, s. 432E (as amended (1.5.1995) by 1995 c. 4, s. 51, Sch. 8 Pt. I para. 16(3) (with ss. 55(2), 57(1)))
- C29** S. 83(6) modified (*retrospective* to 1.1.1996) by S.I. 1997/743, **regs. 1(2), 35** (as amended (1.12.2001) by S.I. 2001/3629, **arts. 160, 165(1)(b)**)

**[<sup>F68</sup>83A Meaning of “brought into account”.**

- (1) [<sup>F69</sup>In sections 83 to 83AB] “brought into account” means brought into account in an account which is recognised for the purposes of [<sup>F70</sup>those sections].
- (2) Subject to the following provisions of this section and to any regulations made by the Treasury, the accounts recognised for the purposes of [<sup>F71</sup>those sections] are—
- (a) a revenue account prepared for the purposes of [<sup>F72</sup>Chapter 9 of the Prudential Sourcebook (Insurers)] in respect of the whole of the company’s [<sup>F73</sup>long-term] business;
  - (b) any separate revenue account required to be prepared [<sup>F74</sup>under that Chapter] in respect of a part of that business.

[<sup>F75</sup>In paragraph (a) “the Prudential Sourcebook (Insurers)” means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000.]

- (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.

<sup>F76</sup>(5) . . . . .]

**Textual Amendments**

- F68** 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))
- F69** Words in s. 83A(1) substituted (29.4.1996 with effect as mentioned in Sch. 31 para. 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 6(1)(a)**
- F70** Words in s. 83A(1) substituted (29.4.1996 with effect as mentioned in Sch. 31 para. 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 6(1)(b)**
- F71** Words in s. 83A(2) substituted (29.4.1996 with effect as mentioned in Sch. 31 para. 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 6(2)**
- F72** Words in s. 83A(2)(a) substituted (1.12.2001 with effect as mentioned in art. 57(2) of the amending Act) by S.I. 2001/3629, **art. 57(1)(a)**

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- F73** Words in s. 83A(2)(a) substituted (1.12.2001) by S.I. 2001/3629, art. 60(2)(a)  
**F74** Words in s. 83A(2)(b) substituted (1.12.2001 with effect as mentioned in art. 57(2) of the amending Act) by S.I. 2001/3629, art. 57(1)(b)  
**F75** Words in s. 83A(2) substituted (1.12.2001 with effect as mentioned in art. 57(2) of the amending S.I.) by S.I. 2001/3629, art. 57(1)(c)  
**F76** S. 83A(5) repealed (1.1.1996) by 1996 c. 8, s. 205, Sch. 41 Pt. V(26), note

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

- C30** S. 83A modified (*retrospective* to 1.1.1995) by S.I. 1997/473, regs. 1(2), 36, 37

**[<sup>F77</sup>83AA] amounts added to [<sup>F78</sup>long term insurance] 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 [<sup>F79</sup>long-term insurance] 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 [<sup>F78</sup>long-term insurance] 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—

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A is the aggregate of such of the relevant amounts added to the company's [F78]long-term insurance] 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.]

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### Textual Amendments

- F77** 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**
- F78** Words in s. 83AA(3)(4) and the sidenote substituted (1.12.2001) by S.I. 2001/3629, **art. 60(1)(b)**
- F79** Words in the definition of “relevant amount” in s. 83AA(2) substituted (1.12.2001) by S.I. 2001/3629, **art. 60(1)(b)**

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

- C31** S. 83AA modified (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(1)**
- C32** S. 83AA restricted (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(3)**

### [<sup>F80</sup> 83AB] Treatment of surplus where there is a subsequent transfer of business from the company etc.

- (1) If an amount is added to the [<sup>F81</sup>long-term insurance] 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 [<sup>F81</sup>long-term insurance] 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.

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- (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

**F80** 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**

**F81** Words in s. 83AB(1)(3) substituted (1.12.2001) by S.I. 2001/3629, **art. 60(1)(c)**

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

**C33** 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.

- [<sup>F82</sup>(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.

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- (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 March 1989; 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 and 435 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

**F82** 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 [<sup>F83</sup>basic life assurance and general annuity business]—
- (a) which, if those profits were charged under Case I of Schedule D, would be taken 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—

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- (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
  - [<sup>F84</sup>(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

**F83** 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.

**F84** Finance Act 1990 (c. 29), s. 44(1)(4)—deemed always to have had effect

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

**C34** 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 [<sup>F85</sup>basic life assurance and general annuity business],—

- (a) commissions (however described), other than commissions [<sup>F86</sup>for persons who collect premiums from house to house],
- (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,

[<sup>F87</sup>reduced by the items specified in subsection (1A) below.]

[<sup>F88</sup>(1A) Those items are—

- (a) the appropriate portion of any deduction falling to be made under paragraph (aa) of subsection (1) of section 76 of the Taxes Act 1988 for the period in question;
- (b) any such repayments or refunds falling within paragraph (c) of that subsection as are received in that period;
- (c) any reinsurance commissions falling within paragraph (ca) of that subsection.

- (1B) For the purposes of paragraph (a) of subsection (1A) above, “the appropriate portion” of the deduction there mentioned is the amount which bears to the whole of

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that deduction the proportion which the acquisition expenses, without making the reduction required by subsection (1) above, would bear to the whole of the expenses of management, without making the deductions required by paragraphs (aa), (a), (c) and (ca) of section 76(1) of the Taxes Act 1988.]

- (2) The exclusion from paragraph (a) of subsection (1) above of commissions [<sup>F89</sup>for persons who collect premiums from house to house] 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.
- [<sup>F90</sup>(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
- [<sup>F91</sup>(a)] the securing on or after 14th March 1989 of the payment of increased or additional premiums in respect of a policy of insurance issued in respect of an insurance already made (whether before, on or after that date) [<sup>F92</sup>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 [<sup>F85</sup>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.
- [<sup>F93</sup>(5A) References in this section to expenses of management do not include any amounts treated as additional expenses of management [<sup>F94</sup>under section 256(2)(a) of the Capital Allowances Act (giving effect to capital allowances referable to basic life assurance and general annuity business of company carrying on life assurance business)].]
- (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 base period”) 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.



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- (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 1st January 1990 (including the 1990 component period).

#### Textual Amendments

- F85** 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**.
- F86** Words in s. 86(1)(a) substituted (29.4.1996 with effect in relation to accounting periods beginning on or after 1.1.1996) by 1996 c. 8, s. **167(3)(a)(10)**
- F87** Words in s. 86(1) substituted (29.4.1996 with effect as mentioned in Sch. 31 para. 10(1)) by 1996 c. 8, s. 163, **Sch. 31 para. 3(1)**
- F88** S. 86(1A)(1B) inserted (29.4.1996 with effect as mentioned in Sch. 31 para. 10(1)) by 1996 c. 8, s. 163, **Sch. 31 para. 3(2)**
- F89** Words in s. 86(2) substituted (29.4.1996 with effect in relation to accounting periods beginning on or after 1.1.1996) by 1996 c. 8, s. **167(3)(b)(10)**
- F90** 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**.
- F91** 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**.
- F92** 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**.
- F93** S. 86(5A) inserted (1.5.1995) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 23(3)** (with Sch. 8 paras. 55(2), 57(1))
- F94** Words in s. 86(5A) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 70**

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

- C35** S. 86 modified (retrospective to 1.1.1995) by S.I. 1997/473, **regs. 1(2), 39**

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**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.”

<sup>F95</sup>(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, sections 75, 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 76 thereof),—
  - (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

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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 1st January 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

**F95** 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) [<sup>F96</sup>and section 88A] below, in the case of a company carrying on life assurance business, the rate of corporation tax chargeable for any financial year on
- [<sup>F97</sup>(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.
- [<sup>F98</sup>(3) For the purposes of subsection (1) above, the relevant profits of a company for an accounting period are the income and gains of the company's life assurance business reduced by the aggregate amount of—
- [ amounts falling in respect of any non-trading deficits on the company's loan  
<sup>F99</sup>(aa) relationships to be brought into account in that period in accordance with paragraph 4 of Schedule 11 to the Finance Act 1996,]  
(a) expenses of management falling to be deducted under section 76 of the Taxes Act 1988, and  
(b) charges on income,  
so far as referable to the company's life assurance business.]
- (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' [<sup>F100</sup>share] of the company's relevant profits for that period [<sup>F101</sup>, 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.

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### Textual Amendments

- F96** Words in s. 88(1) inserted (29.4.1996 with effect for the financial year 1996 and subsequent financial years) by 1996 c. 8, s. 73(4), **Sch. 6 para. 26(1)(4)**
- F97** Words in s. 88(1) substituted (and deemed always to have had effect) by Finance Act 1990 (c. 29), s. **45(1)(10)**
- F98** S. 88(3) substituted (1.5.1995) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 21(2)** (with Sch. 8 paras. 55(2), 57(1))
- F99** S. 88(3)(aa) inserted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 56** (with savings in Ch. II, ss. 80-105 of Pt. IV)
- F100** Word in s. 88(4) substituted (and deemed always to have had effect) by Finance Act 1990 (c. 29), s. **45(2)(10)**
- F101** Words in s. 88(4) inserted (and deemed always to have had effect) by Finance Act 1990 (c. 29), s. **45(2)(10)**

### [<sup>F102</sup>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), [<sup>F103</sup>or]
    - [ any foreign income distribution (within the meaning of section 468K <sup>F104</sup>(ii) of that Act),]
 as is deemed by subsection (2) of section 468Q of that Act [<sup>F105</sup>(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,

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- (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**

- F102** 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)**
- F103** Word in s. 88A(3)(d)(i) repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, **Sch. 8 Pt. II(11)**, note
- F104** S. 88A(3)(d)(ii) repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, **Sch. 6 para. 18(1)(a)(2)**, **Sch. 8 Pt. II(11)**, note
- F105** Words in s. 88A(3) repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, **Sch. 6 para. 18(1)(b)(2)**, **Sch. 8 Pt. II(11)**, note

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

- C36** S. 88A modified (*retrospective* to 1.1.1996) by **S.I. 1997/473**, **regs. 1(2)**, 40

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**[<sup>F106</sup>89 Policy holders' share of profits.**

(1) The references in [<sup>F107</sup>sections 88 and 88A] above to the policy holders' share of the relevant profits for an accounting period of a company carrying on life assurance business [<sup>F108</sup>or, as the case may be, basic life assurance and general annuity 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 of [<sup>F109</sup>its life assurance 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—

- <sup>F110</sup>(a) .....
- (b) the shareholders' share of any <sup>F111</sup> . . . franked investment income arising in the period [<sup>F112</sup>which is referable to the company's basic life assurance and general annuity business][<sup>F113</sup>, and
- (c) the shareholders' share of any foreign income dividends arising to the company in the period [<sup>F114</sup>which are referable to the company's basic life assurance and general annuity business].]

[ For the purposes of subsection (2) above—

- <sup>F115</sup>(2A) (a) "foreign income dividends" shall be construed in accordance with Chapter VA of Part VI;
- (b) the shareholders' share of any foreign income dividends is so much of the income they represent as is the shareholders' share.]

(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 [<sup>F116</sup>insurance]fund 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;

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(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 [F117Chapter 9 of the Prudential Sourcebook (Insurers)]; and where the company’s period of account does not coincide with the accounting period, any reference to an amount brought into account for 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.

[ In this section—  
F118(7)

“Case I profits” means profits computed in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D;

“the Prudential Sourcebook (Insurers)” means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000.]

F119(8) . . . . . ]

#### Textual Amendments

- F106 S. 89 substituted retrospectively by [Finance Act 1990 \(c. 29\)](#) {s. 45(3)}
- F107 Words in s. 89(1) substituted (29.4.1996 with effect for the financial year 1996 and subsequent financial years) by [1996 c. 8, s. 73\(4\)](#), [Sch. 6 para. 26\(3\)\(a\)\(4\)](#)
- F108 Words in s. 89(1) inserted (29.4.1996 with effect for the financial year 1996 and subsequent financial years) by [1996 c. 8, s. 73\(4\)](#), [Sch. 6 para. 26\(3\)\(b\)\(4\)](#)
- F109 Words in s. 89(1) substituted (29.4.1996 with effect for the financial year 1996 and subsequent financial years) by [1996 c. 8, s. 73\(4\)](#), [Sch. 6 para. 26\(3\)\(c\)\(4\)](#)
- F110 S. 89(2)(a) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by [1997 c. 58, ss. 23, 52](#), [Sch. 3 para. 14\(2\)\(a\)\(4\)](#), [Sch. 8 Pt. II\(6\)](#), note
- F111 Words in s. 89(2)(b) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by [1997 c. 58, ss. 23, 52](#), [Sch. 3 para. 14\(2\)\(b\)\(i\)\(4\)](#), [Sch. 8 Pt. II\(6\)](#), note
- F112 Words in s. 89(2)(b) substituted (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by [1997 c. 58, s. 23](#), [Sch. 3 para. 14\(2\)\(b\)\(ii\)\(4\)](#)
- F113 S. 89(2)(c) and word immediately preceding it repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by [1997 c. 58, ss. 36, 52](#), [Sch. 6 para. 19\(2\)\(4\)](#), [Sch. 8 Pt. II\(11\)](#), note
- F114 Words in s. 89(2)(c) substituted (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by [1997 c. 58, s. 23](#), [Sch. 3 para. 14\(2\)\(c\)\(4\)](#)
- F115 S. 89(2A) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by [1997 c. 58, ss. 36, 52](#), [Sch. 6 para. 19\(3\)\(4\)](#), [Sch. 8 Pt. II\(11\)](#), note
- F116 Word in s. 89(5)(a) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 60\(3\)](#)
- F117 Words in s. 89(6) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 58\(2\)](#)
- F118 S. 89(7) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 58\(3\)](#)
- F119 S. 89(8) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by [1997 c. 58, ss. 23, 52](#), [Sch. 3 para. 14\(3\)\(4\)](#), [Sch. 8 Pt. 2\(6\)](#) Note

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

**C37** 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)

**[<sup>F120</sup>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**

**F120** 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 the purposes of subsections (1) to (6) above as if they formed part of the premiums trust fund at the beginning of 1st January concerned or the end of 31st December concerned (as the case may be).”

<sup>F121</sup>(2) .....

(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.



*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F121** s. 91(2) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), [Sch. 11](#) paras. 22, 26(2), 27)

**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.”

- F122(3) .....
- F123(4) .....
- F123(5) .....
- F123(6) .....
- F123(7) .....

**Textual Amendments**

**F122** [S. 92\(3\)](#) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), [Sch. 11](#) paras. 22, 26(2), 27)

**F123** [S. 92\(4\)-\(7\)](#) repealed (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, s. 213, [Sch. 23 Pt. III\(12\)](#) Note 5

*Securities*

F124<sup>93</sup> .....

**Textual Amendments**

**F124** [S. 93](#) repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(3\)](#), note

F125<sup>94</sup> .....

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F125** S. 94 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3), note

**F126** 95 .....

**Textual Amendments**

**F126** S. 95 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3), note

**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) or 716(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;”.

**F127** (3) .....

(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.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### Textual Amendments

**F127** S. 96(3) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

### *Groups of companies*

#### [<sup>F128</sup>97] **Set-off of ACT where companies remain in the 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.]

#### Textual Amendments

**F128** S. 97 repealed (31.7.1998 with effect in accordance with [Sch. 3](#) of the amending Act) by [1998 c. 36, s. 165, Sch. 27 Pt. III\(2\)](#), note

#### [<sup>F129</sup>98] **Restriction on set-off of ACT.**

- (1) After section 245 of the Taxes Act 1988 there shall be inserted—

##### **“ Restriction on application of section 240 in certain circumstances.**

- (1) This section applies if—
  - (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and
  - (c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of section 240 the surrendering company in relation to that amount.
- (2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

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- (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.

**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.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

(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.]

**Textual Amendments**

**F129** S. 98 repealed (31.7.1998 with effect in accordance with Sch. 3 of the amending Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(2), note

**F130**99 .....

**Textual Amendments**

**F130** S. 99 repealed (11.5.2001 with application as mentioned in Sch. 33 Pt. 2(10) of the amending Act) by 2001 c. 9, s. 110, Sch. 33 Pt. 2(10), note

**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

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the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

“relevant assets”, in relation to a company, means—

- (a) any ordinary share capital of another company, and
- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

- (a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).”

- (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 to group relief etc.**

(1) Paragraph 1 of Schedule 18 to the Taxes Act 1988 (which contains definitions relating to group relief) shall be amended in accordance with this section.

(2) For sub-paragraph (3)(b) there shall be substituted—

“(b) do not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

(3) For sub-paragraph (5)(a) there shall be substituted—

“(a) which does not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

(4) After sub-paragraph (5) there shall be inserted—

“(5A) This sub-paragraph applies to any shares which—

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- (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 of any other description, except shares or securities in the company's quoted parent company, or to the acquisition of any additional shares or securities.
- (5B) This sub-paragraph applies to any securities representing a loan of or including new consideration and—
- (a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and
  - (b) which does not carry any such rights as are mentioned in sub-paragraph (5A)(b) above.
- (5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company (“the parent company”) is another company’s “quoted parent company” if and only if—
- (a) the other company is a 75 per cent. subsidiary of the parent company,
  - (b) the parent company is not a 75 per cent. subsidiary of any company, and
  - (c) the parent company’s ordinary shares (or, if its ordinary share capital is divided into two or more classes, its ordinary shares of each class) are quoted on a recognised stock exchange or dealt in on the Unlisted Securities Market;
- and in this sub-paragraph “ordinary shares” means shares forming part of ordinary share capital.
- (5D) In the application of sub-paragraphs (3) and (5) to (5B) above in determining for the purposes of sub-paragraph (5C)(a) above who are the equity holders of the other company (and, accordingly, whether section 413(7) prevents the other company from being treated as a 75 per cent. subsidiary of the parent company for the purposes of sub-paragraph (5C)(a)), it shall be assumed that the parent company is for the purposes of sub-paragraphs (3) and (5) to (5B) above the other company’s quoted parent company.”
- (5) In sub-paragraph (6) for the words “to (5)” there shall be substituted the words “to (5D)”.
- (6) This section, so far as relating to Schedule 18 of the Taxes Act 1988 in its application (by virtue of section 138 below) for the purposes of subsections (1D) and (1E) of section 272 of the Taxes Act 1970, shall be deemed 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 refund relating to an accounting period of the company (“the relevant accounting period”), and
  - (b) another company (“the recipient company”) which is a member of the same group throughout the appropriate period also has the relevant accounting period as an accounting period.

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(2) Where this subsection applies the two companies may, at any time before the refund is made to the surrendering company, jointly give notice to the inspector in such form as the Board may require that subsection (4) below is to have effect in relation to the refund or to any part of the refund specified in the notice.

(3) In subsection (1) above—

“appropriate period” means the period beginning with the relevant accounting period and ending on the day on which the notice under subsection (2) above is given, and

“tax refund relating to an accounting period” means, in relation 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 company in the period, or
- (c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in the period.

(4) Subject to subsection (6) below, where this subsection has effect in relation to any refund or part of a refund—

- (a) the recipient company shall be treated for all purposes of the Tax Acts as having paid on the relevant date an amount of corporation tax for the relevant 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 the surrendering company on the relevant date a repayment of corporation tax or income tax or a payment of tax credit (as the case may be) equal to the amount of the refund or part;

and where the refund is a repayment of corporation tax, any interest relating to it which has been paid by the surrendering company shall be treated as having been paid by the recipient company.

[<sup>F131</sup>(4A) Where subsection (4) above has effect in relation to any amount and there is, by virtue of any of subsections (7) to [<sup>F132</sup>(7CA)] of section 826 of the Taxes Act 1988, a period for which the whole or any part of that amount would not, had the refund been made to the surrendering company, have carried interest under that section, that period shall be treated as excluded—

- (a) from any period for which any refund made by virtue of subsection (4) above to the recipient company in respect of some or all of that amount or, as the case may be, that part of it is to carry interest under that section; and
- (b) from any period for which a sum representing some or all of that amount or part would (apart from this subsection) be treated by virtue of subsection (4) above as not carrying interest under section 87A of the <sup>M8</sup>Taxes Management Act 1970;

and in determining for the purposes of this subsection which part of any amount is applied in discharging a liability of the recipient company to pay any corporation tax and which part is represented by a refund to the recipient company, it shall be assumed that the part in relation to which there is a period which would not have carried interest under section 826 of the Taxes Act 1988 is applied in preference to any other part of that amount in or towards discharging the liability.]

(5) In subsection (4) above “relevant date”, in relation to a refund, means—



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- (a) in so far as it consists of a repayment of corporation tax paid by the surrendering company after the date on which it became due and payable under <sup>F133</sup>section 59D or 59E of the Taxes Management Act 1970], the day on which it was paid by that company, and
- (b) otherwise, the date on which corporation tax for the relevant accounting period became due and payable.
- (6) For the purpose of ascertaining the amount of any penalty to which the recipient company is liable under <sup>F134</sup>paragraph 18 of the Taxes Management Act 1970], the corporation tax which the company is treated as having paid by subsection (4)(a) above shall be treated as paid on the day on which the notice under subsection (2) above is given (and not on the relevant date).
- (7) A payment for a transferred tax refund—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
- (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income;
- and in this subsection “a payment for a transferred tax refund” means a payment made by the receiving company to the surrendering company in pursuance of an agreement between them as respects the giving of a notice under this section, being a payment not exceeding the amount of the refund in question.
- (8) For the purposes of this section two companies are members of the same group if and only if they would be for the purposes of Chapter IV of Part X of the Taxes Act 1988.
- (9) This section shall not apply unless the relevant accounting period ends after such day, not being earlier than 31st March 1992, as the Treasury may by order made by statutory instrument appoint.

#### Textual Amendments

**F131** S. 102(4A) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 11**

**F132** Words in s. 102(4A) substituted (1.5.1995) by 1995 c. 4, s. 130, **Sch. 24 Pt. II para. 12(3)**

**F133** Words in s. 102(5)(a) substituted (27.7.1999) with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 89(2)(3)

**F134** Words in s. 102(6) substituted (27.7.1999) with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 3**

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

**C38** S. 102 applied (with modifications) (7.1.1999) by S.I. 1998/3175, **reg. 9(1)**

#### Marginal Citations

**M8** 1970 c. 9.

### *Close companies*

#### **103 Repeal of apportionment provisions.**

- (1) Except as provided by subsection (2) below, Chapter III of Part XI of the Taxes Act 1988 (apportionment of undistributed income etc. of close companies) shall not have effect in relation to accounting periods beginning after 31st March 1989.

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- (2) Section 427(4) of the Taxes Act 1988 (which gives relief to an individual where income apportioned to him in an earlier accounting period of a close company is included in a distribution received by him in a later accounting period), and section 427(5) of, and Part I of Schedule 19 to, that Act so far as they relate to section 427(4), shall continue to have effect in any case where the subsequent distribution referred to in section 427(4) is made before 1st April 1992.

#### **104 Meaning of “close company”.**

- (1) In section 414 of the Taxes Act 1988 for subsection (2) (further case in which a company is a close company for the purposes of the Tax Acts) there shall be substituted—

“(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—

- (a) such rights as would, in the event of the winding-up of the company (“the relevant company”) on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
- (b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.

(2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—

- (a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and
- (b) any part of those assets which he would be entitled to receive if—
  - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound upon the basis set out in this subsection, and
  - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

(2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of that paragraph), references to “the relevant company” shall have effect as references to the company concerned.

(2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—

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- (a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and
- (b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that 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) in subsection (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) at the 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 “close investment-holding company” unless it complies with subsection (2) below.

(2) A company (“the relevant company”) complies with this subsection in any accounting period if throughout that period it exists wholly or mainly for any one or more of the following purposes—

- (a) the purpose of carrying on a trade or trades on a commercial basis,
- (b) the purpose of making investments in land or estates or interests in land in cases where the land is, or is intended to be, let to persons other than—

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

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- (c) the purpose of holding shares in and securities of, or making loans to, one or more companies each of which is a qualifying company or a company which—
    - (i) is under the control of the relevant company or of a company which has control of the relevant company, and
    - (ii) itself exists wholly or mainly for the purpose of holding shares in or securities of, or making loans to, one or more qualifying companies,
  - (d) the purpose of co-ordinating the administration of two or more qualifying companies,
  - (e) the purpose of a trade or trades carried on on a commercial basis by one or more qualifying companies or by a company which has control of the relevant company, and
  - (f) the purpose of the making, by one or more qualifying companies or by a company which has control of the relevant company, of investments as mentioned in paragraph (b) above.
- (3) For the purposes of subsection (2) above, a company is a “qualifying company”, in relation to the relevant company, if it—
- (a) is under the control of the relevant company or of a company which has control of the relevant company, and
  - (b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) or (b) above.
- (4) Where a company is wound up, it shall not be treated as failing to comply with subsection (2) above in the accounting period that (by virtue of subsection (7) of section 12) begins with the time which is for the purposes of that subsection the commencement of the winding up, if it complied with subsection (2) above in the accounting period that ends with that time.
- (5) In this section—
- “control” shall be construed in accordance with section 416, and
  - “relative” has the meaning given by section 839(8).
- (6) Section 839 shall apply for the purposes of this section.”
- (3) This section shall have effect in relation to accounting periods beginning after 31st March 1989.

**[<sup>F135</sup>106 Restriction on payment of tax credits.**

- (1) In section 231 of the Taxes Act 1988 (tax credits for certain recipients of 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 close investment-holding company—
- (a) arrangements relating to the distribution of the profits of the company exist or have existed the main purpose of which or one of the main purposes of which is to enable payments, or payments of a greater amount, to be made to any one or more individuals under

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subsection (3) above in respect of such an excess as is mentioned in that subsection, and

- (b) by virtue of those arrangements, any eligible person—
- (i) receives a qualifying distribution consisting of a payment made by the company on the redemption, repayment or purchase of its own shares, or
  - (ii) receives any other qualifying distribution in respect of shares in or securities of the company, where the amount or value of the distribution is greater than might in all the circumstances have been expected but for the arrangements,

the entitlement of the eligible person to have paid to him under subsection (3) above all or part of a tax credit in respect of any distribution made by the company in the period shall be restricted to such extent as appears to the inspector to be just and reasonable.

(3B) Subsection (3A) above does not apply in relation to a tax credit in respect of a dividend paid by a company in any accounting period in respect of its ordinary share capital if—

- (a) throughout the period, the company's ordinary share capital consisted of only one class of shares, and
- (b) no person waived his entitlement to any dividend which would have become payable by the company in the period or failed to receive any dividend which had become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

“arrangements” means arrangements of any kind whether in writing or not,

“close investment-holding company” has the meaning given by section 13A, and

“eligible person”, in relation to a qualifying distribution, means an individual resident in the United Kingdom who would (apart from subsection (3A) above) be entitled to have paid to him under subsection (3) above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled to have any excess of tax credit paid to him in a case where subsection (3A) above applies, tax credits shall be set against income tax in the order that results in the greatest payment in respect of the excess.”

(2) This section shall have effect in relation to distributions made by companies in accounting periods beginning after 31st March 1989.]

#### Textual Amendments

**F135** S. 106 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, s. 52, Sch. 8 Pt. II(9), note 3

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**107 Close companies: consequential amendments.**

Schedule 12 to this Act (in which Part I contains administrative provisions relating to close companies and Part II makes amendments connected with section 103 above) shall have effect.

*Settlements etc.*

<sup>F136</sup>**108** .....

**Textual Amendments**  
**F136** S. 108 repealed (1.5.1995 with effect for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(8)**, note

**109 Settlements where settlor retains interest in settled property.**

<sup>F137</sup>(1) .....

<sup>F137</sup>(2) .....

<sup>F137</sup>(3) .....

(4) In section 677(2)(c) of that Act, after “674” there shall be inserted “674A”.

**Textual Amendments**  
**F137** S. 109(1)-(3) repealed (1.5.1995 with effect for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(8)**, note

**110 Residence of trustees.**

(1) Where the trustees of a settlement include at least one 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 trustee or trustees not resident in the United Kingdom shall be treated as resident there, and
- (b) otherwise, the trustee or trustees resident in the United Kingdom shall be 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 times in relation to a settlor—

- (a) in the case of a settlement arising under a testamentary disposition of the settlor or on his intestacy, the time of his death, and

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- (b) in the case of any other settlement, the time or, where there is more than one, each of the times when he has provided funds directly or indirectly for the purposes of the settlement.
- (4) For the purposes of this section “settlor”, in relation to a settlement, includes any person who has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement.
- (5) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words “or a United Kingdom trust (as defined in section 231),” there shall be substituted the words “the trustees of a settlement”.
- (6) Subject to subsections (7) to (9) below, this section shall apply for the year 1989-90 and subsequent years of assessment.
- (7) For the purpose of determining the residence of trustees at any time during the year 1989-90, the condition in subsection (2) above shall be regarded as not having been satisfied if none of the trustees of the settlement is resident in the United Kingdom at any time during the period beginning 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 the Taxes Act 1988 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—
  - (a) the capital sum there referred to is received, or the right to receive it is acquired, before that date, and
  - (b) that sum is wholly repaid, or the right to it waived, before 1st October 1989.
- (9) This section shall not apply for any of the purposes of section 740 of the Taxes 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 April 1989 notwithstanding that one or more of them was not resident outside the United 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 least one 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 personal representative or representatives not resident in the United Kingdom shall be treated as resident there, and
  - (b) otherwise, the personal representative or representatives resident in the United Kingdom shall be treated as not resident there (but as resident outside the United Kingdom).
- (2) The condition referred to in subsection (1) above is that the deceased person 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—

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- (a) in relation to England and Wales, the deceased person's personal representatives as defined by section 55 of the <sup>M9</sup>Administration of Estates Act 1925;
  - (b) in relation to Scotland, his executor or the judicial factor on his estate;
  - (c) in relation to Northern Ireland, his personal representatives as defined by section 45(1) of the <sup>M10</sup>Administration of Estates Act (Northern Ireland) 1955; and
  - (d) in relation to another country or territory, the persons having in relation to him under its law any functions corresponding to the functions for administration purposes of personal representatives under the law of England and Wales.
- (4) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words from “or, in” to “section 701)” there shall be substituted the words “or personal representatives (within the meaning of section 111 of the Finance Act 1989)”.
- (5) Subject to subsections (6) to (8) below, this section shall apply for the year 1989-90 and subsequent years of assessment.
- (6) For the purpose of determining the residence of personal representatives at any time during the year 1989-90, the condition in subsection (2) above shall be regarded as not having been satisfied if none of the personal representatives is resident in the United Kingdom at any time during the period 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 the Taxes Act 1988 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—
- (a) the capital sum there referred to is received, or the right to receive it is acquired, before that date, and
  - (b) that sum is wholly repaid, or the right to it waived, before 1st October 1989.
- (8) This section shall not apply for any of the purposes of section 740 of the Taxes 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 personal representatives before 6th April 1989 notwithstanding that one or more of them was not resident outside the United Kingdom, unless they have been charged to tax in respect of it.

**Marginal Citations**

**M9** 1925 c.23.

**M10** 1955 c. 24 (N.I.).

*Miscellaneous*

**112 Security: trades etc.**

- (1) This section applies in computing, for the purposes of Case I or Case II of Schedule D, the [<sup>F138</sup>profits] of a trade, profession or vocation carried on by an individual or by a partnership of individuals.



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- (2) In a case where this section applies, nothing in section 74(a) or (b) of the Taxes Act 1988 (deductions limited by reference to purposes of trade etc.) shall prevent the deduction of a sum in respect of expenditure incurred in connection with the provision for or use by the individual, or any of the individuals, of a security asset or security service.
- (3) Subsection (2) above shall not apply unless the asset or service is provided 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 or vocation concerned.
- (4) Subsection (2) above shall not apply unless the person incurring the expenditure 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 the benefit resulting to the individual consists wholly or mainly of an improvement of his personal physical security.
- (6) Subsection (2) above shall not apply in the case of an asset unless the person incurring the expenditure intends the asset to be used solely to improve personal physical security.
- (7) But in a case where—
  - (a) apart from subsection (6) above, subsection (2) above would apply in the case of an asset, and
  - (b) the person incurring the expenditure intends the asset to be used partly to improve personal physical security,subsection (2) shall nevertheless apply, but only as regards the appropriate proportion of the expenditure there mentioned.
- (8) For the purposes of subsection (7) above the appropriate proportion of the expenditure mentioned in subsection (2) above is such proportion of that expenditure as is attributable to the intention of the person incurring it that the asset be used to improve personal physical security.

#### **Textual Amendments**

**F138** Word in s. 112(1) substituted (31.7.1998) by 1998 c. 36, s. 46(3), Sch. 7 para. 3

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

**C39** S. 112 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)

### **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 an aircraft,

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- (d) references to an asset or service do not include references to a dwelling or 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 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 112(6) above.
- (3) The fact that an asset or service improves the personal physical security of any member of the family or household of the individual concerned, as well as that of the individual, shall not prevent section 112(2) above from applying.
- (4) For the purposes of section 112 above in its 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 section 112 above in its application to an asset, it is immaterial whether or not the individual concerned 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) Section 112 above applies where expenditure is incurred on or after 6th April 1989.

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

**C40** 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 for expenditure incurred by a person within three years before he begins to carry on a trade, profession or vocation), for the word “three” there shall be substituted the word “five”.
- (2) This section shall have effect where the time when the person begins to carry 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 Taxes Act 1988 provide —
- (a) for persons who are resident outside the United Kingdom and who receive distributions from companies resident in the United Kingdom to be entitled to tax credits, and
  - (b) for the amount paid to such a person by way of tax credit to be determined by reference to the amount to which an individual resident in the United Kingdom would have been entitled, subject to a deduction calculated by reference to the aggregate of the amount or value of the distribution and the amount of the tax credit paid,

the arrangements shall be construed as providing for that deduction to be calculated by reference to the gross amount or value of the distribution and tax credit, without any allowance for the deduction itself.

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- (2) This section shall have effect in relation to payments made before the passing of this Act as well as those made after that time, except that it shall 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 or the House of Lords where the judgment of the High Court or the Court of Session which is in issue was given before that date.

<sup>F139</sup>116 .....

**Textual Amendments**

**F139** S. 116 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)**, note

**CHAPTER II**

CAPITAL ALLOWANCES

117– ..... <sup>F140</sup>  
120

**Textual Amendments**

**F140** Ss. 117–120 repealed by Capital Allowance Act 1990 (c.1, SIF 63:1), s. 164(4)(5), **Sch. 2**

<sup>F141</sup>121 .....

**Textual Amendments**

**F141** S. 121 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 580, **Sch. 4**

**CHAPTER III**

CAPITAL GAINS

*Exemptions*

<sup>F142</sup>122 .....

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F142** S. 122 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

**123 Increase of chattel exemption.**

(1) In the following enactments, namely—

- <sup>F143</sup>(a) .....
  - (b) section 12(2)(b) of the <sup>M11</sup>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 be substituted “£6,000”.

(2) This section applies to disposals on or after 6th April 1989 and accordingly, in relation to subsection (1)(b) above, to assets acquired on or after that date.

**Textual Amendments**

**F143** S. 123(1)(a) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

**Marginal Citations**

**M11** 1970 c. 9.

*Gifts*

<sup>F144</sup>**124** .....

**Textual Amendments**

**F144** S. 124 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

<sup>F145</sup>**125** .....

**Textual Amendments**

**F145** S. 125 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

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*Non-residents etc.*

F146 **126** .....

**Textual Amendments**

F146 S. 126 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F147 **127** .....

**Textual Amendments**

F147 S. 127 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F148 **128** .....

**Textual Amendments**

F148 S. 128 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F149 **129** .....

**Textual Amendments**

F149 S. 129 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F150 **130** .....

**Textual Amendments**

F150 S. 130 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F151 **131** .....

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F151** S. 131 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F152** **132** .....

**Textual Amendments**

**F152** S. 132 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F153** **133** .....

**Textual Amendments**

**F153** S. 133 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F154** **134** .....

**Textual Amendments**

**F154** S. 134 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

*Value shifting and groups of companies*

**F155** **135** .....

**Textual Amendments**

**F155** S. 135 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F156** **136** .....

**Textual Amendments**

**F156** S. 136 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

<sup>F157</sup>**137** .....

**Textual Amendments**

**F157** S. 137 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

<sup>F158</sup>**138** .....

**Textual Amendments**

**F158** S. 138 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

*Miscellaneous*

<sup>F159</sup>**139** .....

**Textual Amendments**

**F159** S. 139 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

<sup>F160</sup>**140** .....

**Textual Amendments**

**F160** S. 140 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

<sup>F161</sup>**141** .....

**Textual Amendments**

**F161** S. 141 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

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*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1989, Part II. (See end of Document for details)*

## CHAPTER IV

### MANAGEMENT

#### *Information*

#### **142 Power to call for documents and information.**

- (1) Section 20 of the <sup>M12</sup> Taxes Management Act 1970 (power to call for documents of taxpayer and others) shall be amended in accordance with subsections (2) to (8) below.
- (2) In subsection (1), for the words “a person” onwards there shall be substituted the words “a person—
  - (a) to deliver to him such documents as are in the person’s possession or power 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 require as being relevant to, or to the amount of, any such liability.”
- (3) In subsection (2), for the words “a person” onwards there shall be substituted the words “a person
  - (a) to deliver to a named officer of the Board such documents as are in the person’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 Board may reasonably require as being relevant to, or to the amount of, any such liability.”
- (4) In subsection (3)—
  - (a) for the words “of the persons who in relation to the taxpayer are subject to this subsection” there shall be substituted the words “other person”, and
  - (b) at the end there shall be added the words “; and the persons who may be required to deliver or make available a document under this subsection include the 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 be substituted 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) above shall name the taxpayer with whose liability the inspector (or, where section 20B(3) below applies, the Board is concerned.”
- (8) After subsection (8B) there shall be inserted—



*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- “(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 in such personal records or journalistic material.
- (8D) Subject to subsection (8C) above, references in this section to documents and 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 made available), or particulars to be furnished, within such time (which, except in the case of a notice under subsection (2) above, shall not be less than thirty 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 may take copies of them or of extracts from them.”
- (9) In section 12(3) of the <sup>M13</sup> National Savings Bank Act 1971, for the words “20(4)(b)” onwards there shall be substituted the words “20(3) of that Act (requirement to deliver or make available documents relating to liability of a taxpayer).”
- (10) This section shall apply with respect to notices given on or after the day on which this Act is passed.

#### **Marginal Citations**

**M12** 1970 c. 9.

**M13** 1971 c. 29.

### **143 Power to call for papers of tax accountant.**

- (1) In section 20A of the <sup>M14</sup> Taxes Management Act 1970 (power to call for papers of tax accountant) for the last 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 (which shall not be less than thirty days after the date of the notice) as may be specified 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 day on which this Act is passed.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1989, Part II. (See end of Document for details)*

#### Marginal Citations

M14 1970 c. 9.

#### 144 Restrictions on powers under TMA ss.20 and 20A.

- (1) Section 20B of the <sup>M15</sup> Taxes Management Act 1970 (restrictions on powers under sections 20 and 20A) shall be amended as follows.
- (2) In subsection (1), after the word “question” there shall be inserted the 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 person under section 20(3) the inspector shall give a copy of the notice to the taxpayer to whom it relates.
  - (1B) If, on an application by the inspector, a General or Special Commissioner so directs, a copy of a notice under section 20(3) need not be given to the taxpayer to whom it relates; but such a direction shall not be given unless the Commissioner is satisfied that the inspector has reasonable grounds for suspecting the taxpayer of fraud.”
- (4) In subsection (2), after the words “deliver documents”, in the first place where they occur, there shall be inserted the words “or furnish particulars”.
- (5) In subsection (5), for the words from “if” to “or company” there shall 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 the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
    - (b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.
  - (10) In subsections (9) above “relevant communications” means communications 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 of those tax affairs; and in subsection (9) above and this subsection “tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (11) Subject to subsection (13) below, subsection (9) above shall not have effect in relation to any document which contains information explaining any information, return, accounts or other document which the person to whom the notice is given has, as tax accountant, assisted any client of his in preparing for, or delivering to, the inspector or the Board.
- (12) Subject to subsection (13) below, in the case of a notice under section 20(8A) subsection (9) above shall not have effect in relation to any document which contains information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.
- (13) Subsection (9) above is not disapplied by subsection (11) or (12) above in the case of any document if—
- (a) the information within subsection (11) or (12) is contained in some other document, and
  - (b) either—
    - (i) that other document, or a copy of it, has been delivered to the inspector or 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) above in the case of a document, the person to whom the notice is given either shall deliver the document to the inspector or make it available for inspection by an officer of the Board or shall—
- (a) deliver to the inspector (or, where subsection (3) above applies, the Board) a copy (which is photographic or otherwise by way of facsimile) of any parts 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), make available for inspection by a named officer of the Board such parts of the document as contain that information;
- and failure to comply with any requirement under paragraph (b) above shall constitute a failure to comply with the notice.”
- (8) This section shall apply with respect to notices given on or after the day on which this Act is passed.

**Marginal Citations**

**M15** 1970c. 9.

**145 Falsification etc. of documents.**

- (1) After section 20B of the <sup>M16</sup>Taxes Management Act 1970 there shall be inserted—

**“20BB Falsification etc. of documents.**

- (1) Subject to subsections (2) to (4) below, a person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

causes or permits the falsification, concealment, destruction or 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 he acts—

- (a) with the written permission of a General or Special Commissioner, the inspector 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 he acts after the end of the period of two years beginning with the date on which the notice is given, unless before the end of that period the inspector or an officer of the Board has notified the person in writing that the notice has not been complied with to his satisfaction.

(4) A person does not commit an offence under subsection (1) (b) above if he acts—

- (a) after the end of the period of six months beginning with the date on which an opportunity to deliver the document was given, or
- (b) after an application for consent to a notice being given in relation to the document has been refused.

(5) A person guilty of an offence under subsection (1) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

(2) This section shall apply to any falsification, concealment, destruction or disposal of a document occurring on or after the day on which this Act is passed.

**Marginal Citations**

**M16** 1970 c. 9.

**146 Entry with warrant to obtain documents.**

(1) Section 20C of the <sup>M17</sup>Taxes Management Act 1970 (entry with 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 the words “serious fraud”, and
- (b) for the words “has been” there shall be substituted the words “is being, has been or is about to be”.

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*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

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(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 an offence involving serious fraud if its commission had led, or is intended or likely to lead, either to substantial financial gain to any person or to serious prejudice to the proper assessment or collection of tax; and
- (b) an offence which, if considered alone, would not be regarded as involving serious fraud may nevertheless be so regarded if there is reasonable ground for suspecting that it forms part of a course of conduct which is, or but for its detection would be, likely to result in serious prejudice to the proper assessment or collection of tax.

(1B) The powers conferred by a warrant under this section shall not be exercisable—

- (a) by more than such number of officers of the Board as may be specified in the 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 constable in uniform.”

(4) For subsections (3) to (5) there shall be substituted—

“(3) An officer who enters the premises under the authority of a warrant under this 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 reasonable cause to believe may be required as evidence for the purposes of proceedings in 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 he has 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 of documents in the possession of a barrister, advocate or solicitor with respect to which a claim to professional privilege could be maintained.

(5) An officer of the Board seeking to exercise the powers conferred by a warrant under this section or, if there is more than one such officer, that one of them who is in charge of the search—

- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and
- (c) if neither paragraph (a) nor paragraph (b) above applies, shall leave such a copy in a prominent place on the premises.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (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 of the warrant, he shall endorse on or attach to the warrant a list of the things seized.
- (7) Subsections (10) to (12) of section 16 of the Police and Criminal Evidence Act 1984 (return, retention and inspection of warrants) apply to a warrant under this section (together with any list endorsed on or attached to it under subsection (6) above) as they apply to a warrant issued to 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 the day on which this Act is passed.

**Marginal Citations**

M17 1970 c. 9.

**147 Procedure where documents etc. are removed.**

- (1) The following section shall be inserted after section 20C of the <sup>M18</sup>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 power conferred by section 20C above shall, if so requested by a person showing himself—
- (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 time from the making of the request for it.
- (3) Where anything which has been removed by an officer of the Board as mentioned in subsection (1) above is of such a nature that a photograph or copy 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 an offence,
- it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.
- (4) Subject to subsection (8) below, if a request for permission to be granted access 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 person who had custody or control of the thing immediately before it was so removed or by

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.

- (5) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was removed, or by someone acting on behalf of any such person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of 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 the photograph 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 the making of the request.
- (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation;
  - (b) the investigation of an offence other than the offence for the purposes of 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 the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.”
- (2) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

**Marginal Citations**

**M18** 1970c. 9.

**148 Interpretation.**

- (1) Section 20D of the <sup>M19</sup>Taxes Management Act 1970 shall be amended as follows.
- (2) In subsection (2), for the words “of returns or accounts to be made or delivered by the other” there shall be substituted the words “or delivery of 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—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- “(3) Without prejudice to section 127 of the Finance Act 1988, in sections 20 to 20CC above “document” has, subject to sections 20(8C) and 20A(1A), the same 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 <sup>M20</sup>Taxes Management Act 1970 before the coming into force of sections 142 and 146 above.

**Marginal Citations**

**M19** 1970 c. 9.

**M20** 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 Taxes Management Act 1970—

**“36 Fraudulent or negligent conduct.**

- (1) An assessment on any person (in this section referred to as “the person in default”) for the purpose of making good to the Crown a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than twenty years after the end of the chargeable period to which the assessment relates.
  - (2) Where the person in default is an individual who carried on a trade or profession in partnership with another individual, or with other persons at least one of whom is an individual, at any time in the year for which the assessment is made, an assessment in respect of the profits or gains of the trade or profession for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or, as the case may be, on any of his partners who is an individual.
  - (3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by the Taxes Acts.”
- (2) Sections 37 to 39 (special provisions as to “neglect”) and section 41 (leave required for certain assessments) of the Taxes Management Act 1970 shall cease to have effect.



*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (3) The words “section 36” shall be substituted—
- (a) for the words “sections 36, 37 and 39” in section 30(6) of the <sup>M21</sup>Taxes Management Act 1970 (tax repaid in error etc.),
  - (b) for the words “sections 37 to 39” in section 118(3) of that Act (effect under law of Scotland of assessment in partnership name),
  - [<sup>F162</sup>(c) for the words “sections 36 and 39” in paragraph 10(1) of Schedule 13 to the Taxes Act 1988 (assessments to advance corporation tax),] and
  - (d) for the words “sections 36 and 37” in paragraph 10(1) of Schedule 16 to that Act (assessments to income tax on company payments which are not distributions).
- (4) The words “fraudulent or negligent conduct” shall be substituted—
- (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 <sup>M22</sup>Finance Act 1973 and 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 for withdrawing relief under Chapter III of Part VII of that Act).
- (5) In section 105 of the Taxes Management Act 1970 (admissibility of evidence), for the words “fraud or default” and the words “fraud or wilful default” there shall be substituted the words “fraudulent conduct”.
- (6) In paragraph 9 of Schedule 16A to the Finance Act 1973 and of Schedule 19A to 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.

#### Textual Amendments

**F162** S. 149(3)(c) repealed (31.7.1998 with effect in accordance with Sch. 3 of the amending Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(2), note

#### Marginal Citations

**M21** 1970 c.9.

**M22** 1973 c. 51.

## 150 Further assessments: claims etc.

- (1) The following sections shall be inserted after section 43 of the Taxes Management Act 1970—

### “43A Further assessments: claims etc.

- (1) This section applies where—

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*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

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- (a) by virtue of section 29(3) of this Act an assessment is made on any person for a chargeable period, and
  - (b) the assessment is not made for the purpose of making good to the Crown any loss of tax attributable to his fraudulent or negligent conduct or the fraudulent 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 been made or given within the time allowed by the Taxes Acts may be made or given at any time within one year from the end of the chargeable period in which the assessment is made, and
  - (b) any relevant claim, election, application or notice previously made or given 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 or consented to it (or, in the case of any such person who has died, by or with the 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 a chargeable period if—
- (a) it relates to that chargeable period or is made or given by reference to an event occurring in that chargeable period, and
  - (b) it or, as the case may be, its revocation or variation has or could have the 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 not later than one year after the end of the chargeable period in which the assessment is made.
- (5) Where a claim, election, application or notice is made, given, revoked or varied 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 assessments or otherwise, as are required to take account of the effect of the taking of that action on any person's liability to tax for any chargeable period.
- (6) The provisions of this Act relating to appeals against decisions on claims shall apply with any necessary modifications to a decision on the revocation or variation of a claim by virtue of subsection (2) above.

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*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

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### **43B Limits on application of section 43A.**

- (1) If the effect of the exercise by any person of a power conferred by section 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 made or given,would be to alter the liability to tax of another person, that power may not 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 in consequence of an assessment made on a person, and
    - (b) the exercise of the power increases the liability to tax of another person,that section shall not apply by reason of any assessment made because of that 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 in the case of an assessment, and
    - (b) the total of the reductions in liability to tax which, apart from this subsection, would result from the action mentioned in paragraph (a) above would 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 reduction in a person's liability to tax for more than one period or the reduction in the liability to tax of more than one person, the limited amount shall be apportioned between the periods or persons concerned—
    - (a) except where paragraph (b) below applies, in such manner as may be specified by the inspector by notice in writing to the person or persons concerned, 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 manner as 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 relevant period is the period of 30 days beginning with the day on which notice under paragraph (a) of that subsection is given to the person concerned or, where more than one person is concerned, the latest date on which such notice is given to any of them.”
- (2) This section shall apply in relation to any assessment notice of which is issued on or after the day on which this Act is passed.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

## 151 Assessment of trustees etc.

(1) Income tax chargeable in respect of income arising to the trustees of a settlement, or to the personal representatives of a deceased person, may be assessed and charged on and in the name of any one or more of the relevant trustees or, as the case may be, the relevant personal representatives.

[<sup>F163</sup>(2) In this section “the relevant trustees”—

- (a) in relation to any income, other than gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988, means the trustees to whom the income arises and any subsequent trustees of the settlement; and
- (b) in relation to gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988, means the trustees in the year of assessment in which the gains arise and any subsequent trustees of the settlement;

and “the relevant personal representatives” has a corresponding meaning.]

(3) In this section “personal representatives” has the same meaning as in section 111 of this Act.

(4) This section shall be deemed always to have had effect.

### Textual Amendments

**F163** S. 151(2) substituted (31.7.1998 with effect as mentioned in [Sch. 14 para. 7\(3\)\(4\)\(5\)](#) of the amending Act) by 1998 c. 36, s. 86, [Sch. 14 para. 6](#)

*Distress and poinding etc.*

## 152 Distress for non-payment of tax.

(1) Section 61 of the <sup>M23</sup>Taxes Management Act 1970 (distress) shall be amended as follows.

(2) In subsection (1), for the words “the collector shall” onwards there shall be substituted the words “the collector may distrain upon the goods and chattels of the person charged (in this section referred to as “the person in default”).”

(3) In subsection (2), for the words from “a collector” to “Commissioners” there shall be substituted the words “a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, 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 “in default”,
- (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 more independent persons appointed by the collector”, and
- (d) the words from “The costs” to “the collector, and” shall be omitted.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

(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 which shall be subject to annulment in pursuance of a resolution of the House of Commons.”

(7) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

#### Marginal Citations

M23 1970 c. 9.

### 153 Priority in cases of distraint by others.

(1) Section 62 of the <sup>M24</sup>Taxes Management Act 1970 (priority of claim for tax) shall be amended as follows.

(2) In subsection (1)—

- (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any goods or chattels belonging to any person (in this section referred to as “the person in default”) are”,
- (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods or chattels may not be so taken unless on demand made by the collector”, and
- (c) for the words “arrears of tax” onwards there shall be substituted the words “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 tax from emoluments paid during the period of twelve months next before the date of seizure, being deductions which the person in default was liable to make under section 203 of the principal Act (pay as you earn) less the amount of the 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 to be 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 shall 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 in that subsection, the collector may”,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (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 be substituted the words “those sums”.

**Marginal Citations**

M24 1970 c. 9.

**154 Recovery of tax from debtor in Scotland.**

- (1) Section 63 of the <sup>M25</sup>Taxes Management Act 1970 (recovery of tax in Scotland) shall be amended as follows.
- (2) In subsection (3), for the words “which relates to” onwards there shall 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 was liable 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 the application.”
- (3) The following subsection shall be added after that subsection—
  - “(4) In this section references to amounts of tax due and references to sums due in respect of deductions include references to amounts which are deemed to 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**

M25 1970 c. 9.

**155 Priority in cases of pouncing etc. by others in Scotland.**

- (1) Section 64 of the Taxes Management Act 1970 (priority of claim for tax in Scotland) shall be amended as follows.
- (2) In subsection (1)—
  - (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any moveable goods and effects belonging to any person (in this section referred to as “the person in default”) are”,
  - (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods and effects may not be so taken unless on demand made by the collector”, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

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- (c) for the words “the tax so in arrear” onwards there shall be substituted the words “such sums as have fallen due at or before the date of pointing 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 tax from emoluments paid during the period of twelve months next before the date of pointing, being deductions which the person in default was liable to make under section 203 of the principal Act (pay as you earn) less the amount of the 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 to be 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” there shall 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 in that subsection, the sums shall”, and
  - (b) for the words “proceeding at his instance” there shall be substituted the word “proceedings”.

*Interest etc.*

## **156 Interest on overdue tax.**

- (1) In section 86 of the <sup>M26</sup>Taxes Management Act 1970, for subsection (3) and the words in subsection (4) preceding the Table there shall be substituted—
- “(3) For the purposes of this section—
- (a) the reckonable date in relation to any tax charged by an assessment to income tax under Schedule E, and
  - (b) subject to subsection (3A) below, the reckonable date in relation to tax charged 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 tax charged by the assessment is due and payable on a date later than the date given by the Table in subsection (4) below, the reckonable date in relation to 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 had been no appeal against the assessment (assuming in a case where the tax would not have been charged by the assessment if there had been no appeal that it was so charged).
- (4) The Table referred to in subsection (3A) above is as follows—”.
- (2) In section 55 of that Act—

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- (a) in subsection (2), for the words “it were” onwards there shall be substituted the words “there had been no appeal.”,
  - (b) in subsection (6), for paragraphs (a) and (b) there shall be substituted—
    - “(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, the date on which any tax the payment of which is not so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had 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 postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against 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 determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, be determined as if the tax were charged by an assessment—
        - (i) notice of which was issued on the date on which the inspector issues to the appellant a notice of the total amount payable in accordance with the determination, 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 shall be substituted the words “amount charged by”.
- (4) This section shall apply to tax charged by any assessment notice of which is issued after 30th July 1982.

**Marginal Citations**

M26 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 a result of the making of a claim under section 240 of that Act, the reckonable date for the purposes of section 86



*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

of the <sup>M27</sup>Taxes Management Act 1970 (in this section referred to as “section 86”) is the date which is given by paragraph 5 of the 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 referred to as “the later period”) an amount of surplus advance corporation tax, 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 part of that amount is treated for the purposes of the said section 239 as discharging liability for an amount of corporation tax for an earlier accounting 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 carry interest in accordance with section 86, or
    - (ii) an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period.
- (3) In determining the amount of interest payable under section 86 on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from section 239(3) of the Taxes Act 1988 except so far as concerns interest for any time after the day 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, an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period, interest under section 86 shall be chargeable, in relation to any time not later than the day referred to in subsection (3) above, as if the claim had not been made and such an assessment had been made.
- (5) In relation to interest charged under section 86 by virtue of subsection (4) above, section 69 of the <sup>M28</sup>Taxes Management Act 1970 shall 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 an assessment”.
- (6) In this section—
- (a) subsection (1) above shall have effect where the claim under 240 of the Taxes Act 1988 is made on or after 14th March 1989, and
  - (b) subsections (2) to (5) above shall have effect where the claim under section 239(3) of that Act is made on or after that date,
- but this section shall not have effect in relation to corporation tax for any accounting period ending after the day which is the appointed day for the purposes of section 85 of the <sup>M29</sup>Finance (No.2) Act 1987.

#### Marginal Citations

**M27** 1970 c. 9.

**M28** 1970 c. 9.

**M29** 1987 c. 51.

## 158 Small amounts of interest.

- (1) In the Taxes Management Act 1970—

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (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 or income 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) [<sup>F164</sup>section 283(1) of the <sup>M30</sup>Taxation of Chargeable Gains Act 1992] (no repayment 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 repayment supplement where overdue repayment of income tax etc. less than £25), and the words “of not less than £100” in section 825(2) of the Taxes Act 1988 (no repayment supplement where overdue repayment of company tax less 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 tax is made on or after the appointed day, and
- (b) in any other case, where the tax is charged by an assessment notice of which is issued on or after the appointed day.
- (4) Paragraph (b) of that subsection shall have effect where the tax is charged by an assessment relating to an accounting period beginning on or after the appointed day.
- (5) Subsection (2) above shall have effect in relation to repayments of tax made on or after the appointed day.
- (6) In this section “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint; and different days may be appointed for different enactments or for different purposes of the same enactment.

#### Textual Amendments

**F164** Words in s. 158(2)(a) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 19(3) (with ss. 60, 101(1), 201(3))

#### Marginal Citations

**M30** 1975 c. 45.

### <sup>F165</sup>159 Interest on tax in case of failure or error.

- (1) Section 88 of the <sup>M31</sup>Taxes Management Act 1970 (interest on tax recovered to make good loss due to taxpayer’s fault) shall be amended as follows.
- (2) In subsection (1), for the words “the fraud, wilful default or neglect of any person” there shall be substituted the words—
- “(a) a failure to give a notice, make a return or produce or furnish a document or other information required by or under the Taxes Acts, or

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (b) an error in any information, return, accounts or other document delivered to 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 do something includes, in relation to anything required to be done at a particular time or within a particular period, a reference to a failure to do it at that time or within that period; and, accordingly, section 118(2) of this Act shall not apply for the purposes of that paragraph.”
- (4) This section shall have effect in relation to failures occurring, and errors in any information or documents delivered, on or after the day on which this Act is passed.]

#### Textual Amendments

**F165** S. 159 repealed (29.4.1996 with effect as specified in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(8), note

#### Marginal Citations

**M31** 1970 c. 9.

### 160 Determinations under TMA s. 88.

[<sup>F166</sup>(1) In subsection (1) of section 88 of the Taxes Management Act 1970, for the words “shall carry” there shall be substituted the words “shall, if an inspector or the Board so determine, carry”.]

[<sup>F166</sup>(2) The following section shall be inserted after that section—

#### “ Determinations under section 88.

- (1) Notice of a determination under section 88 above shall be served on the person liable to pay the interest to which it relates and shall specify—
- the date on which it is issued,
  - the amount of the tax which carries interest and the assessment by which that tax was charged,
  - the date when for the purposes of section 88 above that tax ought to have been paid, and
  - 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 served the determination shall not be altered except in accordance with this section.
- (3) A determination under section 88 above may be made at any time—
- within six years after the end of the chargeable period for which the tax carrying the interest is charged (or, in the case of development land tax, of the financial year in which the liability for that tax arose), or
  - within three years after the date of the final determination of the amount of that tax.

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- (4) An appeal may be brought against a determination under section 88 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against 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 the determination, or
  - (c) if the determination appears to them to be incorrect as to the amount of tax or the date on which the tax ought to have been paid, revise the determination accordingly.”]

(3) In section 70 (certificates) of the <sup>M32</sup>Taxes Management Act 1970, for subsection (3) there shall be substituted—

“(3) A certificate of the inspector or any other officer of the Board that it has been determined that tax carries interest under section 88 of this Act, together with a certificate of the collector that payment of the interest has not been made to him, or, to the best of his knowledge and belief, to any other collector, or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence—

    - (a) that interest is chargeable on the tax from the date when for the purposes of 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 the Crown;

and any document purporting to be such a certificate as is mentioned in this subsection shall be deemed to be such a certificate unless the contrary is proved.”

[<sup>F166</sup>(4) In section 113 of that Act (form of documents), the following subsection shall be inserted after subsection (1B)—

“(1C) Where an officer of the Board has decided that an amount of tax carries interest under section 88 of this Act and has taken the decisions needed for arriving at the date when for the purposes of that section that tax ought to have been paid, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving 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 the word “assessment”, in each place where it occurs, there shall be inserted the words “or determination”.

[<sup>F167</sup>(6) In paragraph 5 of Schedule 3 to that Act (rules for assigning proceedings to Commissioners), the following entry shall be inserted in the first column after the entry relating to an appeal against an assessment to capital gain tax— “ An appeal against a determination under section 88 of this Act. ”]

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### Textual Amendments

**F166** S. 160(1)(2)(4) repealed (29.4.1996 with effect as specified in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(8), note

**F167** S. 160(6) repealed (29.4.1996 with effect as mentioned in Sch. 22 para. 12 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(12), note

#### Marginal Citations

**M32** 1970 c. 9.

### [<sup>F168</sup>161 Tax carrying interest under TMA ss. 86 and 88.

The following subsection shall be substituted for section 88(3) of the <sup>M33</sup>Taxes Management Act 1970—

“(3) Where it is finally determined that any tax carries interest under this section, the tax shall carry no interest under section 86 or 86A above (and, accordingly, any interest under either of those sections which has been paid before the final determination shall be set off against the amount of the interest under this section); and for the purposes of this subsection a determination that tax carries interest is not final until it can no longer be varied, whether by any Commissioners on appeal or by the order of any court.”]

#### Textual Amendments

**F168** S. 161 repealed (29.4.1996 with effect as specified in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(8), note

#### Marginal Citations

**M33** 1970 c. 9.

### *Penalties*

#### 162 Failure to make return.

(1) Section 93 of the Taxes Management Act 1970 (failure to comply with notice to make return for income tax or capital gains tax) shall be amended as follows.

(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 day on which the failure continues after the day on which the penalty under paragraph (a) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”

(3) The following subsection shall be substituted for subsection (2)—

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- “(2) If a failure by a person to comply with a notice such as is referred to in subsection (1) above continues after the end of the year of assessment following that during which it was served then, without prejudice to any penalty under subsection (1) above, he shall be liable to a penalty of an amount not exceeding so much of the tax with which he is charged (whether for one or for more than one year of assessment) in assessments—
- (a) based wholly or partly on any income or chargeable gains that ought to have been included in the return required by the notice, and
  - (b) made after the end of the year next following the year of assessment in which the notice was served,
- as is attributable to the income or chargeable gains that ought to have been 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 a failure 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 income or chargeable gain to be included in the return, the penalty under this subsection shall not exceed £100.”
- (6) This section shall apply in relation to any failure to comply with a notice served on or after 6th April 1989.

### 163 Incorrect return, accounts etc.

- (1) In—
- (a) section 95(1) of the <sup>M34</sup>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 the words “the amount of the difference specified in subsection (2) below.”
- (2) This section shall apply in relation to returns, statements, declarations or accounts delivered, made or submitted on or after the day on which this Act is passed.

#### Marginal Citations

M34 1970 c. 9.

### 164 Special returns, information etc.

- (1) Section 98 of the Taxes Management Act 1970 (special returns, information etc.) shall be amended as follows.
- (2) In subsection (1) (initial and daily penalties)—
- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (b) for the words “subsection (3)” onwards there shall be substituted the words “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 day on which the failure continues after the day on which the penalty under paragraph (i) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) In subsection (2) (maximum penalty for information given fraudulently or negligently)
- (a) for the word “Where” there shall be substituted the words “Subject to 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 a failure within paragraph (a) of that subsection at any time after the failure has been remedied.
  - (4) No penalty shall be imposed under paragraph (ii) of subsection (1) above in respect of a failure within paragraph (b) of that subsection at any time after the failure has been remedied.”
- (5) In the Table—
- (a) in the first column, in the entry relating to Part III of the <sup>M35</sup>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 shall be 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 from the first column and an entry relating to section 482(2) of that Act shall be inserted at the appropriate place in the second column.
- (6) In consequence of the amendment made by subsection (5)(a) above section 16(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 a certificate or produce a document or record beginning on or after the day on which 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**

M35 1970 c.9.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1989, Part II. (See end of Document for details)*

## 165 Special penalties in the case of certain returns.

- (1) The following section shall be inserted after section 98 of the Taxes Management Act 1970—

### “98A Special penalties in the case of certain returns.

- (1) Regulations under section 203(2) (PAYE) or 566(1) (sub-contractors) of the principal Act may provide that this section shall apply in relation to any specified provision of the regulations.
- (2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—
  - (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 any month after the twelfth or for which a penalty under this paragraph has already been imposed, and
  - (b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of 19th April after the end of that year.
- (3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—
  - (a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, and
  - (b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty.
- (4) Where this section applies in relation to a provision of regulations, any person who fraudulently or negligently makes an incorrect return of a kind mentioned in the provision shall be liable to a penalty not exceeding the difference between—
  - (a) the amount payable by him in accordance with the regulations for the year of assessment to which the return relates, and
  - (b) the amount which would have been so payable if the return had been correct.”

- [<sup>F169</sup>(2) In relation to a failure to make a return beginning before such day as the Treasury may by order made by statutory instrument appoint, section 98A(2) shall have effect with the substitution of the following paragraph for paragraph (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 for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this sub-paragraph has already been imposed.”.]



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#### Textual Amendments

**F169** S. 165(2) repealed (with effect in relation to failures beginning on or after 20.5.1995) by Finance Act 1989 (c. 26, SIF 63:1), ss. 165(2), 187(1), Sch. 17 Pt. VIII Note 7; S.I. 1994/2508, art. 2

### 166 Assisting in preparation of incorrect return etc.

- (1) The following section shall be substituted for section 99 of the <sup>M36</sup>Taxes Management Act 1970—

#### “99 Assisting in preparation of incorrect return etc.

Any person who assists in or induces the preparation or delivery of any information, 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 inducements occurring on or after the day on which this Act is passed.

#### Marginal Citations

**M36** 1970c. 9.

### 167 Determination of penalties.

The following sections shall be substituted for section 100 of the <sup>M37</sup>Taxes Management Act 1970—

#### “100 Determination of penalties by officer of Board.

- (1) Subject to subsection (2) below and except where proceedings for a penalty have been instituted under section 100D below or a penalty has been imposed by the Commissioners under section 53 of this Act, an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.

- (2) Subsection (1) above does not apply where the penalty is a penalty under—
- (a) section 93(1) above as it has effect before the amendments made by section 162 of the Finance Act 1989 or section 93(1)(a) above as it has effect after those amendments,
  - (b) section 94(1) above as it has effect before the substitution made by section 83 of the Finance (No. 2) Act 1987,
  - (c) section 98(1) above as it has effect before the amendments made by section 164 of the Finance Act 1989 or section 98(1)(i) above as it has effect after those amendments, or

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (d) paragraph (a)(i) of section 98A(2) above as it has effect by virtue of section 165(2) of the Finance Act 1989.
- (3) Notice of a determination of a penalty under this section shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
- (4) After the notice of a determination under this section has been served the determination shall not be altered except in accordance with this section on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount of a penalty determined under this section is or has become insufficient the officer may make a determination in a further amount so that the penalty is set at the amount which, 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 of the Board authorised by the Board for the purposes of this section that the amount which was taken into account as the relevant amount of tax is or has become excessive,
- the determination shall be revised so that the penalty is set at the amount which is correct; and, where more than the correct amount has already been 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 under section 100 above which could have been made in relation to him may be made in relation to his personal representatives, and any penalty imposed on personal representatives by virtue of this subsection shall be a debt due from and payable out of his estate.
- (2) A penalty determined under section 100 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (3) A penalty determined under section 100 above shall for all purposes be treated 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 under section 100 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but—

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- (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 the determination aside,
    - (ii) if the amount determined appears to them to be correct, confirm the determination, or
    - (iii) if the amount determined appears to them to be incorrect, increase or reduce 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 the determination aside,
    - (ii) if the amount determined appears to them to be appropriate, confirm the determination,
    - (iii) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or
    - (iv) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (3) Without prejudice to section 56 of this Act, an appeal from a decision of the Commissioners against the amount of a penalty which has been determined under section 100 above or this section shall lie, at the instance of the person liable to the penalty, to the High Court or, in Scotland, to the Court of Session as the Court of Exchequer in Scotland; and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this section.

#### **100C Penalty proceedings before Commissioners.**

- (1) An officer of the Board authorised by the Board for the purposes of this section may commence proceedings before the General or Special Commissioners for any penalty to which subsection (1) of section 100 above does not apply by 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 this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this section shall lie to the High Court or, in Scotland, the Court of Session as the 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 the penalty.
- (5) On any such appeal the court may—

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (a) if it appears that no penalty has been incurred, set the determination aside,
- (b) if the amount determined appears to be appropriate, confirm the determination,
- (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate, or
- (d) if the amount determined appears to be insufficient, increase it to such amount 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 a penalty arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.
- (2) Proceedings under this section which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of 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 Northern Ireland.
- (3) Any proceedings under this section instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of 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 fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.”

#### **Marginal Citations**

M37 1970 c. 9.

### **168 Amendments consequential on section 167.**

- (1) In consequence of the amendment made by section 167 above the <sup>M38</sup>Taxes Management Act 1970 shall be amended in accordance with subsections (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 incurred by” there shall be substituted the words “a penalty imposed on”,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (b) in subsection (2), for the word “award” in the first place where it occurs there shall be substituted the word “penalty” and for that word in 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 be substituted the words “imposition on” and for the word “award” there shall be substituted the word “penalty”.

<sup>F170</sup>(3) . . . . .

(4) In section 102 (mitigation of penalties), for the words “recovery thereof” there shall be substituted the words “a penalty”.

(5) In section 105 (evidence)—

(a) the following paragraph shall be substituted for paragraph (a) of subsection (1)

—  
“(a) pecuniary settlements may be accepted instead of a penalty being determined, or proceedings being instituted, in relation to any tax,”

(b) in paragraph (b) of subsection (2), for the words “sum” onwards there shall 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 of a penalty.”

(6) In section 112 (loss of documents etc.), the following subsection shall be added at the end—

“(3) The references in subsection (1) above to assessments to tax include references to determinations of penalties; and in its application to such determinations the proviso to that subsection shall have effect with the appropriate 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 under section 100 of this Act and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving 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 the words “, of determination”, and

(iii) after the words “levying tax” there shall be inserted the words “or determining a penalty”.

[<sup>F171</sup>(8) In paragraph 5 of Schedule 3 (rules for assigning proceedings to Commissioners), for the words “section 100(4)” there shall be substituted the words “section 100C or an appeal under section 100B against the determination of a penalty”.]

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(9) In section 41 of the <sup>M39</sup>Development Land Tax Act 1976 (administration of development land tax) the following subsection shall be inserted after subsection (1)—

“(1A) Nothing in sections 167 to 169 of the Finance Act 1989 shall apply to penalties relating to development land tax.”

**Textual Amendments**

**F170** S. 168(3) repealed (1.9.1994) by S.I. 1994/1813, reg. 2(2), **Sch. 2 Pt. I**

**F171** S. 168(8) repealed (29.4.1996 with effect as mentioned in **Sch. 22 para. 12** of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(12)**, note

**Marginal Citations**

**M38** 1970 c.9.

**M39** 1976 c. 24.

**169 Time limits.**

(1) The following section shall be substituted for section 103 of the <sup>M40</sup>Taxes Management Act 1970—

**“103 Time limits for penalties.**

(1) Subject to subsection (2) below, where the amount of a penalty is to be ascertained by reference to tax payable by a person for any period, the penalty may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the Commissioners or a court—

- (a) at any time within six years after the date on which the penalty was incurred, or
- (b) at any later time within three years after the final determination of the amount of tax by reference to which the amount of the penalty is to be ascertained.

(2) Where the tax was payable by a person who has died, and the determination would 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 than six 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 of the 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 was incurred.

(4) A penalty to which neither subsection (1) nor subsection (3) above applies may be so determined, or proceedings for such a penalty may be commenced before the Commissioners or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred.”

(2) The amendment made by subsection (1) above shall not affect the application of section 103(4) of the <sup>M41</sup>Taxes Management Act 1970 to proceedings under section 100 of that Act as it has effect before the amendment made by section 167 above.

*Status: Point in time view as at 01/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### Marginal Citations

**M40** 1970c. 9.

**M41** 1970 c. 9.

### 170 Up-rating of certain penalties.

[<sup>F172</sup>(1) In section 23(8) of the Taxes Act 1988 (maximum penalty for agents failing to make certain payments on behalf of principals), for “£50” there shall be substituted “£300”.]

<sup>F173</sup>(2) .....

(3) In section 306(6) of that Act (maximum penalty for false certificates or statements relating to investment in corporate trades), for the words “£250 or, in the case of fraud, £500” there shall be substituted “£3,000”.

(4) In—

- (a) section 619(7) of that Act (maximum penalty for false statements or representations relating to relief for qualifying premiums),
- (b) section 653 of that Act (maximum penalty for statements or representations about personal pension schemes), and
- (c) section 658(5) of that Act (maximum penalty for false statements or representations 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 <sup>M42</sup>Finance Act 1973 (maximum penalty for incorrect return by Lloyd’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 after the day on which this Act is passed.

#### Textual Amendments

**F172** S. 170(1) repealed (1.5.1995 with effect as mentioned in s. 39(4)(5) of the amending Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(1)**, note

**F173** S. 170(2) repealed (16.7.1992 with effect in accordance with s. 32 of the repealing Act) by **Finance (No. 2) Act 1992 (c. 48)**, ss. 32, 82, **Sch. 18 Pt. VII(4)**

#### Marginal Citations

**M42** 1973 c. 51.

**Status:**

Point in time view as at 01/12/2001.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1989, Part II.