



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- (b) in subsection (5) (age allowance withdrawn by two-thirds of amount by which income exceeds a specified limit) for “two-thirds” there shall be substituted “one half”.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

**F536 Schedule E: revised Cases.**

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**Textual Amendments**

- F5 Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F537 Schedule E: assessment on receipts basis.**

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**Textual Amendments**

- F5 Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F538 Schedule E: unpaid emoluments.**

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**Textual Amendments**

- F5 Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F539 Schedule E: unremitted emoluments.**

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**Textual Amendments**

- F5 Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F540 Schedule E: emoluments already paid.**

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**Textual Amendments**

- F5** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

**<sup>F5</sup>41 Schedule E: pensions etc.**

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**Textual Amendments**

- F5** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

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

- C7** S. 41 extended (3.5.1994) by [1994 c. 9](#), s. 139(3)

**<sup>F5</sup>42 Schedule E: supplementary.**

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**Textual Amendments**

- F5** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

**<sup>F6</sup> 43 Schedule D: computation**

- (1) In calculating [<sup>F7</sup>profits or gains to be charged under Schedule D] for a period of account, no deduction is allowed for an amount charged in the accounts in respect of employees' remuneration, unless the remuneration is paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) For the purposes of subsection (1) above an amount charged in the accounts in respect of employees' remuneration includes an amount [<sup>F8</sup>for which provision is made in the accounts] with a view to its becoming employees' remuneration.
- (3) Subsection (1) above applies whether the amount is in respect of particular employments or in respect of employments generally.
- (4) If the remuneration is paid after the end of the period of 9 months mentioned in subsection (1) above, any deduction allowed in respect of it is allowed for the period of account in which it is paid and not for any other period of account.
- (5) If the profits <sup>F9</sup>... are calculated before the end of the period of 9 months mentioned in subsection (1) above—
  - (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but

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- (b) if the remuneration is subsequently paid before the end of that period, the calculation is adjusted if a claim to adjust it is made to an officer of the Board within 2 years beginning with the end of the period of account.
- (6) For the purposes of this section, remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
- (b) would be so treated if it were not exempt income.
- (7) In this section—
- “employee” includes an office-holder and “employment” correspondingly includes an office, and
- “remuneration” means an amount which is or is treated as earnings for the purposes of the Income Tax (Earnings and Pensions) Act 2003.]

#### Textual Amendments

- F6** S. 43 substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 157](#) (with [Sch. 7](#))
- F7** Words in s. 43(1) substituted (with effect in accordance with Sch. 17 para. 4(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 17 para. 4\(1\)\(a\)](#)
- F8** Words in s. 43(2) substituted for s. 43(2)(a)(b) (with effect in accordance with Sch. 24 para. 11 of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 24 para. 10\(1\)](#)
- F9** Words in s. 43(5) omitted (with effect in accordance with Sch. 17 para. 4(2) of the amending Act) by virtue of [Finance Act 2004 \(c. 12\), Sch. 17 para. 4\(1\)\(b\)](#)

#### [<sup>F10</sup> 44 Investment and insurance companies: computation

- (1) In calculating the profits of an investment company for a period of account, no deduction is allowed for an amount charged in the accounts in respect of employees' remuneration, unless the remuneration is paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) For the purposes of subsection (1) above an amount charged in the accounts in respect of employees' remuneration includes an amount [<sup>F11</sup>for which provision is made in the accounts] with a view to its becoming employees' remuneration.
- (3) Subsection (1) above applies whether the amount is in respect of particular employments or in respect of employments generally.
- (4) If the remuneration is paid after the end of the period of 9 months mentioned in subsection (1) above, any deduction allowed in respect of it is allowed for the period of account in which it is paid and not for any other period of account.
- (5) If the profits of the trade are calculated before the end of the period of 9 months mentioned in subsection (1) above—
- (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
- (b) if the remuneration is subsequently paid before the end of that period, the calculation is adjusted if a claim to adjust it is made to an officer of the Board

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by or on behalf of the company within 2 years beginning with the end of the period of account.

- (6) For the purposes of this section, remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (7) 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; and in any such case—
- (a) subsection (4) above shall have effect subject to section 86 below, and
  - (b) in construing section 86 below the remuneration shall be treated as expenses for the accounting period.
- (8) In this section—
- “employee” includes an office-holder and “employment” correspondingly includes an office,
  - “investment company” has the same meaning as in Part 4 of the Taxes Act 1988, and
  - “remuneration” means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of the Income Tax (Earnings and Pensions) Act 2003.]

**Textual Amendments**

- F10** S. 44 substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 158** (with [Sch. 7](#))
- F11** Words in s. 44(2) substituted for s. 44(2)(a)(b) (with effect in accordance with [Sch. 24 para. 11](#) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 24 para. 10(1)**

**<sup>F12</sup>45 PAYE: meaning of payment.**

**Textual Amendments**

- F12** [S. 45](#) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

*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.

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**47 Close company loans: business expansion scheme.**

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

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

**48 Close company loans: material interest.**

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

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

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

**“360A Meaning of “material interest” in section 360.**

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

- (a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or
- (b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

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

- (a) any relative or partner of the individual;
- (b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor (“settlement” and “settlor” having the same meaning as in section 681(4)); and
- (c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.

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

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



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- (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 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.”

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*Benefits in kind*

**49 Car benefits.**

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

**“PART I**

TABLES OF FLAT RATE CASH EQUIVALENTS

table A

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

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

table B

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

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

table B

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

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

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

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

**F13 50 Security assets and services.**

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**Textual Amendments**

**F13** Ss. 50-52 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F13 51 Assets used partly for security.**

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**Textual Amendments**

**F13** Ss. 50-52 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F13 52 Security: supplementary.**

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**Textual Amendments**

**F13** Ss. 50-52 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

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

**F14(1)** .....

**F14(2)** .....

**F14(a)** .....

**F14(b)** .....

**F14(c)** .....

**F14(d)** .....

**F14(e)** .....

(f) the words “ employment to which Chapter II of Part V applies ”shall be substituted for the words from “director’s” to “section167” in [<sup>F15</sup>section 418(3)(a)] of that Act;

**F14(g)** .....

*Status: Point in time view as at 22/07/2004.*

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### Textual Amendments

- F14** S. 53 repealed (except s. 53(2)(f) so far as relating to s. 418(3) of ICTA) (6.4.2003) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with [Sch. 7](#))
- F15** Words in s. 53(2)(f) substituted (6.4.2003) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 159](#) (with [Sch. 7](#))

### *Medical insurance*

#### [<sup>F16</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>F17</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>F18</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—

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- (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>F19</sup>(3A) or more payments made in a given year of assessment, the amount of his liability for 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 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 income 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>F20</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.

*Status: Point in time view as at 22/07/2004.*

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

- (8) Regulations under subsection (7) above may include provision adapting or modifying the effect of any enactment relating to income tax in order to secure the performance of any obligation imposed under paragraph (b) of that subsection.
- (9) In this section—
- (a) references to a premium, in relation to a contract of insurance, are to any amount payable under the contract to the insurer, and
  - (b) references to an individual who is resident in the United Kingdom at anytime include references to an individual who is at that time performing duties which are treated by virtue of section 132(4)(a) of the Taxes Act 1988 as performed in the United Kingdom.]

#### Textual Amendments

- F16** 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))
- F17** 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)**
- F18** 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)**
- F19** 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)**
- F20** Words in s. 54(6)(b) inserted (29.4.1996) by 1996 c. 8, s. 129(2)

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

- C8** 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))
- C9** For regulations see S.I. 1989/2387 and S.I. 1989/2389 (in Part III Vol. 5 under “Private medical insurance”)

#### [<sup>F21</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),
  - [<sup>F22</sup>(ba) at the relevant time the contract satisfies the conditions set out in 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>F23</sup>and]
  - (d) no benefit has been provided by virtue of the contract other than an approved benefit, [<sup>F24</sup>and
  - (e) the contract meets one or more of the three conditions set out below.]

*Status: Point in time view as at 22/07/2004.*

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

- [ The conditions referred to in subsection (2)(ba) above are that—
- <sup>F25</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,
- (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>F26</sup>(3) at the relevant time.
- <sup>F26</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>F26</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.

*Status: Point in time view as at 22/07/2004.*

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

- <sup>F26</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,
  - (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>M2</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
- <sup>F27</sup>(a) [ mentioned in subsection (2A)(a) above, or
  - (b) for the time being specified in regulations made under subsection (2A)(b) above.]
- <sup>F28</sup>(10) [ For the purposes of this section a benefit is also an approved benefit if it is not a cash 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.]]



*Status: Point in time view as at 22/07/2004.*

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

#### 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. 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)**
- F23** 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)**
- F24** 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
- F25** 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)**
- F26** 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
- F27** 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)**
- F28** 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

- M2** 1982 c.50.

#### [<sup>F29</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.

*Status: Point in time view as at 22/07/2004.*

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

- (5) Where the Board refuse to certify a contract under this section, or they revoke a certification, an appeal may be made to the Special Commissioners by—
- (a) the insurer, or
  - (b) any person who (if the policy were certified) would be entitled to relief under section 54 above.
- (6) Where a contract is certified under this section, or a certification is revoked or otherwise ceases to have effect, any adjustments resulting from the certification or from its revocation or ceasing to have effect shall be made.
- (7) Subsection (6) above applies where a certification or revocation takes place on appeal as it applies in the case of any other certification or revocation.
- (8) In this section the reference to a premium, in relation to a contract of insurance, is to any amount payable under the contract to the insurer.]

**Textual Amendments**

**F29** 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)**

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

[<sup>F30</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>F31</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;

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*Status: Point in time view as at 22/07/2004.*

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

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- (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;
  - (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>M3</sup>Taxes Management Act 1970 (penalties for failure to furnish information etc.)
- (3) The following provisions of the Taxes Management Act 1970, namely—
- [ section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to <sup>F32</sup>(a) (10) of that Act;]
  - (b) section 30 (tax repaid in error etc.) [<sup>F33</sup>apart from subsection (1B)],
  - (c) [<sup>F34</sup>section 86] (interest), and
  - (d) section 95 (incorrect return or accounts),
- [<sup>F35</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>F36</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>F37</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”.

*Status: Point in time view as at 22/07/2004.*

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

(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

- F30** 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))
- F31** S. 57(1)(aa) inserted (29.4.1996) by 1996 c. 8, s. 129(3)
- F32** 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)**
- F33** 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)**
- F34** 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)**
- F35** 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)**
- F36** 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)**
- F37** 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)

- C11** See S.I. 1989/2387

#### Marginal Citations

- M3** 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.

**F38** **59** .....

#### Textual Amendments

- F38** 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

*Status: Point in time view as at 22/07/2004.*

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

## 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>F39</sup>(3) .....

(4) Subsection (1) above shall apply in relation to accounting periods ending on or after 14th March 1989, and [<sup>F40</sup>subsection (2)] above shall apply to payments due on or after that day.

### **Textual Amendments**

**F39** 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\(8\)](#)

**F40** 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>F41</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**

**F41** 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\(3\)](#)

## <sup>F42</sup>62 **Savings-related share option schemes.**

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### **Textual Amendments**

**F42** S. 62 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

*Status: Point in time view as at 22/07/2004.*

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

**F43 63 Profit sharing schemes.**

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**Textual Amendments**

**F43** 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.

**F44 64 Share option and profit sharing schemes: shares of consortium member.**

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**Textual Amendments**

**F44** S. 64 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

**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.”

**F45 66 Priority share allocations for employees etc.**

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*Status: Point in time view as at 22/07/2004.*

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

### Textual Amendments

**F45** S. 66 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

### *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>F46</sup>profits] of a trade carried on by the company, or
  - (b) if the company is an investment company or a company in the case of which section 75 of the Taxes Act 1988 applies by virtue of section 76 of that Act, shall be treated as expenses of management.
- (3) For the purposes of subsection (1)(b) above, the question whether one company is controlled by another shall be construed in accordance with 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.

*Status: Point in time view as at 22/07/2004.*

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- (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

**F46** 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)

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

**C13** S. 67 excluded (10.7.2003) by Finance Act 2003 (c. 14), s. 142(1)

## 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>F47</sup>the rate applicable to trusts] for the year of assessment in which the event occurs.
- (3) If the whole or any part of the tax assessed on the trustees is not paid before the expiry of the period of six months beginning with the day on which the assessment becomes final and conclusive, a notice of liability to tax under this subsection may be served on a qualifying company and the tax or the part unpaid (as the case may be) shall be payable by the company on service of the notice.
- (4) Where a notice of liability is served under subsection (3) above—
- (a) any interest which is due on the tax or the part (as the case may be) and has not been paid by the trustees, and
  - (b) any interest accruing due on the tax or the part (as the case may be) after the date of service,
- shall be payable by the company.
- (5) Where a notice of liability is served under subsection (3) above and any amount payable by the company (whether on account of tax or interest) is not paid by the company before the expiry of the period of three months beginning with the date of service, the amount unpaid may be recovered from the trustees (without prejudice to the right to recover it instead from the company).
- (6) For the purposes of this section each of the following is a qualifying company—
- (a) the company which established the employee share ownership trust;
  - (b) any company falling within subsection (7) below.
- (7) A company falls within this subsection if, before it is sought to serve a notice of liability on it under subsection (3) above—



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- (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

**F47** 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)

**C14** 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>F48</sup>qualifying period] beginning with the date on which they acquired them;
- (d) the expenditure of a sum by the trustees for a purpose other than a qualifying purpose.

[<sup>F49</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>F50</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 [<sup>F51</sup>a share incentive] plan,
- (b) the plan is approved under [<sup>F52</sup>Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003] when the transfer is made, and

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- (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 [<sup>F53</sup>it has for the purposes of the SIP code (see paragraph 92 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003)]; 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  
 (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>F54</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>F55</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>F56</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>F57</sup>persons] who have accepted.

[<sup>F58</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 [<sup>F59</sup>an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of the Income Tax (Earnings and Pensions) Act 2003)]—

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- (i) which was established by, or by a company controlled by, the company which established the trust, and
  - (ii) which is approved under [<sup>F60</sup>Schedule 3 to that Act], 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>F61</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>F62</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>F63</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.
- 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 [<sup>F64</sup>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

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original shares which those securities represent (construing “reorganisation” and “original shares” in accordance with section [F64126] 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

- F48** Words in s. 69(1)(c) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(2)**
- F49** S. 69(1)(e) inserted (28.7.2000) by 2000 c. 17, s. 55(2)
- F50** S. 69(3AA)-(3AD) inserted (28.7.2000) by 2000 c. 17, s. 55(3)
- F51** Words in s. 69(3AA)(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(2)(a)** (with Sch. 7)
- F52** Words in s. 69(3AA)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(2)(b)** (with Sch. 7)
- F53** Words in s. 69(3AC) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(3)** (with Sch. 7)
- F54** 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)**
- F55** 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)
- F56** 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)
- F57** 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)
- F58** 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)
- F59** Words in s. 69(4ZA)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(4)(a)** (with Sch. 7)
- F60** Words in s. 69(4ZA)(b)(ii) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(4)(b)** (with Sch. 7)
- F61** S. 69(4A) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(3)**
- F62** Words in s. 69(5) inserted (28.7.2000) by 2000 c. 17, s. 55(4)
- F63** S. 69(5A) inserted (28.7.2000) by 2000 c. 17, s. 55(5)
- F64** 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))

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**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*
- C16** S. 69 modified (10.7.2003) by Finance Act 2003 (c. 14), s. 142(2)
- 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>F65</sup>Taxation of Chargeable Gains Act 1992], the chargeable amount is an amount equal to the sums allowable under section [<sup>F65</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>F66</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**

- F65** 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))
- F66** 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*

**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,

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- (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>F67</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—
- (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,

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- (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**

**F67** 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.
- (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—

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- (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.
- (9) In the Table in section 98 of the <sup>M4</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 ”.



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**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**

**M4** [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>F68</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>F69</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>F69</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 not one which when paid [<sup>F70</sup>counts as employment income of a person by virtue of section 386 (1) of the Income Tax (Earnings and Pensions) Act 2003 (charge on payments to non-approved retirement benefit schemes)].
- (4) No sum shall be deducted in respect of any expenses falling within subsection (5) or (6) below—

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- (a) in computing the amount of the [<sup>F68</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>F69</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>F69</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 [<sup>F71</sup>counts as employment income of a person by virtue of section 386 (1) of the Income Tax (Earnings and Pensions) Act 2003 (charge on payments to non-approved retirement benefit schemes)].
- [<sup>F72</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 [<sup>F73</sup>section 387(2) of the Income Tax (Earnings and Pensions) Act 2003], where the expenses are incurred for the benefit of:
- (a) employees whose [<sup>F74</sup>earnings] are [<sup>F75</sup>earnings and amounts treated as earnings to which subsection (6D) applies] 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).]
- [<sup>F76</sup>(6D) This subsection applies to earnings and amounts treated as earnings for a year of assessment if—
- (a) the [<sup>F77</sup>employee] or office-holder is not domiciled in the United Kingdom in that year, and
  - (b) the employment is with a foreign employer.
- (6E) If there is a dispute as to whether the employee or office-holder is not domiciled in the United Kingdom, sections 42 and 43 of the Income Tax (Earnings and Pensions) Act 2003 (Board to determine dispute as to domicile) apply to the dispute as they apply to a dispute mentioned in section 42(1) of that Act.]
- (7) In this section—
- [<sup>F78c</sup>“earnings and amounts treated as earnings” means earnings and amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003),

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“foreign employer” has the meaning given by section 721 of that Act,]  
“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 [F79] section 387(2) of the Income Tax (Earnings and Pensions) Act 2003].

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

#### Textual Amendments

- F68** Words in s. 76(1)(4)(a) substituted (31.7.1998) by 1998 c. 36, s. 46(3), **Sch. 7 para. 3**
- F69** 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)**
- F70** Words in s. 76(3)(b) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 17 para. 10(4)(a)**
- F71** Words in s. 76(6)(b) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 17 para. 10(4)(a)**
- F72** 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)**
- F73** Words in s. 76(6C) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 161(2)(a)** (with **Sch. 7**)
- F74** Word in s. 76(6C) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 161(2)(b)** (with **Sch. 7**)
- F75** Words in s. 76(6C) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 161(2)(c)** (with **Sch. 7**)
- F76** S. 76(6D)(6E) inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 161(3)** (with **Sch. 7**)
- F77** Word in s. 76(6D)(a) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 17 para. 10(4)(b)**
- F78** Words in s. 76(7) inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 161(4)(a)** (with **Sch. 7**)
- F79** Words in s. 76(7) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 161(4)(b)** (with **Sch. 7**)

#### 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. .... F80

#### Textual Amendments

- F80** Ss. 78, 79 repealed by Finance Act 1990 (c. 29, SIF 58), s.132, **Sch. 19 Pt. IV** Note

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**F8180** .....

**Textual Amendments**

**F81** 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>M5</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**

**M5** 1979 c. 14.

*Life assurance*

**[F8282 Calculation of profits: bonuses etc**

- (1) This section and sections 82A [F83 to 82C] below 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) Any amounts which are allocated to policy holders or annuitants in respect of a period of account are allowed as a deduction in calculating the profits for the period of account.
- (3) For the purposes of subsection (2) above, an amount is allocated to policy holders or annuitants if (but only if)—
  - (a) bonus payments are made to them,
  - (b) reversionary bonuses are declared in their favour, or
  - (c) a reduction is made in the premiums payable by them.
- (4) Where an amount is allocated to policy holders or annuitants for the purposes of subsection (2) above, the amount of the allocation is—
  - (a) in the case of bonus payments, the amount of the payments,
  - (b) in the case of declared reversionary bonuses, the amount of the liabilities assumed by the company in consequence of the declaration, and
  - (c) in the case of a reduction in premiums, the amount of the liabilities assumed by the company in consequence of the reduction.

*Status: Point in time view as at 22/07/2004.*

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

#### Textual Amendments

- F82** Ss. 82-82B substituted for s. 82 (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(1\)](#)
- F83** Words in s. 82(1) substituted (with effect in accordance with Sch. 7 para. 5(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 5\(1\)](#)

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

- C24** S. 82 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (SI 1997/473), reg. 32 (as substituted (8.4.2004) by [S.I. 2004/822](#), regs. 1, 27)

### 82A Calculation of profits: policy holders' tax

- (1) Tax expended on behalf of policy holders or annuitants is allowed as a deduction in calculating the profits to the extent (but only to the extent) that regulations made by the Treasury so provide.
- (2) The regulations may include provision for tax so expended to be so allowed even if it is not brought into account.
- (3) The regulations—
  - (a) may make different provision for different cases, and
  - (b) may include provision having effect in relation to periods of account during which they are made.

#### Textual Amendments

- F82** Ss. 82-82B substituted for s. 82 (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(1\)](#)

### 82B Unappropriated surplus on valuation

- (1) This section applies in relation to a period of account of the insurance company (“the period of account in question”) where—
  - (a) at the end of the period of account in question the company has an unappropriated surplus on valuation as shown in the return deposited with the Financial Services Authority under section 9.6 of the Prudential Sourcebook (Insurers) (an “unappropriated surplus”), and
  - (b) the company has not made an election in accordance with Rule 4.1(6) of the Prudential Sourcebook (Insurers) covering the period of account in question.
- (2) Where the company did not have an unappropriated surplus at the end of the period of account immediately preceding the period of account in question, so much of the unappropriated surplus at the end of the period of account in question as is required to meet the duty of fairness is allowed as a deduction in calculating the profits for the period of account in question.
- (3) Where the company did have an unappropriated surplus at the end of that immediately preceding period of account—
  - (a) if so much of the unappropriated surplus at the end of the period of account in question as is required to meet the duty of fairness exceeds so much of

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- the unappropriated surplus at the end of that immediately preceding period of account as was required to meet that duty, the excess is allowed as a deduction in calculating the profits for the period of account in question, but
- (b) if so much of the unappropriated surplus at the end of that immediately preceding period of account as was required to meet the duty of fairness exceeds so much of the unappropriated surplus at the end of the period of account in question as is required to meet that duty, the excess is to be taken into account as a receipt of the period of account in question.
- (4) In arriving for the purposes of this section at the amount of the unappropriated surplus which is or was required to meet the duty of fairness there is to be deducted the aggregate of amounts which—
- (a) for periods of account ending before 14th March 1989 (and the first notional period of account, within the meaning of section 82 above as originally enacted) have been excluded, by virtue of section 433 of the Taxes Act 1988, as being reserved for policy holders 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.
- (5) References in this section to the company’s duty of fairness are to the company’s duty to treat its policy holders and annuitants fairly with regard to terminal bonuses.]

#### Textual Amendments

**F82** Ss. 82-82B substituted for s. 82 (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(1\)](#)

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

**C25** S. 82B applied (with modifications) (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(6\)](#)

**C26** S. 82B modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/437\)](#), [reg. 32A](#) (as inserted (8.4.2004) by [S.I. 2004/822](#), [regs. 1, 28](#))

### [<sup>F84</sup>82C Relevant financial reinsurance contracts

- (1) This section applies where—
- (a) an insurance company (“the company”) enters into a contract of reinsurance which is a relevant financial reinsurance contract, and
- (b) either condition A or condition B is met.
- (2) A contract of reinsurance is a relevant financial reinsurance contract if, under the contract—
- (a) some or all of the liabilities reinsured may cease to be reinsured (without the cedant having any right of recovery against the reinsurer), or
- (b) the cedant may become liable to pay premiums wholly or partly determined (directly or indirectly) by reference to any amount which the reinsurer becomes liable to pay to the cedant under the contract.
- (3) Condition A is that the reduction in the company’s liabilities resulting from the reinsurance under the relevant financial reinsurance contract is not taken into account in calculating the profits of the company.

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- (4) Condition B is that—
- (a) an insurance business transfer scheme has effect to transfer long-term business to the company,
  - (b) there is a deficiency of assets on the transfer,
  - (c) the liabilities reinsured under the relevant financial reinsurance contract are some or all of the liabilities to policy holders and annuitants transferred,
  - (d) the reduction of the company’s liabilities resulting from the reinsurance of those liabilities under the relevant financial reinsurance contract occurs during the period of account in which the transfer takes place, and
  - (e) the whole amount of the liabilities to policy holders and annuitants transferred is not taken into account as opening liabilities in calculating the profits of the company for that period of account.
- (5) For the purposes of subsection (4)(b) above there is a deficiency of assets on the transfer if—
- (a) the aggregate amount of the liabilities to policy holders and annuitants, and of any debts, which are transferred, exceeds
  - (b) the value of the assets transferred and brought into account in the long-term insurance fund of the company.
- (6) The reinsurance offset amount for each period of account of the company beginning before the termination of the relevant financial reinsurance contract is to be taken into account as a receipt of the period of account.
- (7) The reinsurance offset amount for a period of account is the amount of any decrease in the period of account in the difference between the full liabilities and the reduced liabilities where—
- (a) “the full liabilities” is the amount which would be brought into account for the period as liabilities but for the relevant financial reinsurance contract, and
  - (b) “the reduced liabilities” is the amount of the liabilities actually so brought into account.
- (8) But, in a case in which condition B is met, the total amount taken into account by virtue of subsection (6) above must not exceed the amount by which—
- (a) the aggregate amount mentioned in paragraph (a) of subsection (5) above, exceeds
  - (b) the value referred to in paragraph (b) of that subsection.
- (9) For the purposes of this section “insurance business transfer scheme” includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).]

#### **Textual Amendments**

**F84** S. 82C inserted (with effect in accordance with Sch. 7 para. 5(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 5\(2\)](#)

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**[<sup>F85</sup> 83 Receipts to be [<sup>F86</sup> taken] 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.
- [<sup>F87</sup>(2) There shall be taken into account as receipts of a period of account amounts (so far as referable to that business) brought into account for the period of account as—
- (a) investment income receivable before deduction of tax,
  - (b) an increase in the value of non-linked assets,
  - (c) an increase in the value of linked assets, or
  - (d) other income;
- and if amounts (so far as so referable) are brought into account for a period of account as a decrease in the value of non-linked assets or a decrease in the value of linked assets they shall be taken into account as an expense of the period of account.
- (2A) But subsection (2) above does not require to be taken into account as receipts of a period of account so much of the amounts brought into account as mentioned in paragraphs (a) to (d) of that subsection for the period of account as—
- (a) is entirely notional because an amount corresponding to it would fall to be brought into account as an expense (for that or any other period of account),
  - (b) is exempted by section 444AC(2) of the Taxes Act 1988 (transfers of business), or
  - (c) consists of interest paid under section 826 of the Taxes Act 1988 (interest on tax overpaid) in respect of a repayment or payment relating to an accounting period of the company ending before 1st July 1999;
- but, subject to that, the whole of the amounts so brought into account for a period of account shall be taken into account as receipts of the period of account.
- (2B) If any assets of the company's long-term insurance fund are transferred by the company so that they cease to be assets of that fund, but the transfer is not brought into account as part of total expenditure for the period of account in which the transfer takes place or any earlier period of account, the fair value of the assets at the time of the transfer shall be deemed to be brought into account for the period of account in which the transfer takes place as an increase in the value of the assets of that fund unless the assets are excluded from this subsection by—
- (a) subsection (2C) or (2D) below, or
  - (b) section 444AD of the Taxes Act 1988 (transfers of business).
- (2C) Assets transferred to discharge liabilities in respect of deposits received from reinsurers or arising out of insurance operations, debenture loans or amounts borrowed from credit institutions are included in subsection (2B) above only if the deposits, loans or amounts borrowed—
- (a) were brought into account for any period of account, but
  - (b) were not taken into account as receipts of the period of account under subsection (2) above.
- (2D) Assets are excluded from subsection (2B) above if they are transferred for at least their fair value and the consideration for their transfer, when received, forms part of the company's long-term insurance fund.



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(2E) If subsection (2B) above applies in relation to the transfer of all the assets of the company's long term insurance fund in accordance with—

- (a) an insurance business transfer scheme, or
- (b) a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State),

the reference in that subsection to an amount being deemed to be brought into account for the period of account in which the transfer takes place is to its being so deemed for the period of account ending immediately before the transfer takes place.]

[ In ascertaining whether or to what extent a company has incurred a loss in respect of <sup>F88</sup>(3) of [<sup>F89</sup>its life assurance business in a case where assets are] added to the company's [<sup>F90</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 [<sup>F91</sup>under subsection (2) above], for the period for which it is brought into account, as an increase in value of the assets of [<sup>F92</sup>the long-term insurance fund].

(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

<sup>F93</sup>(c) represents so much of the proceeds of the disposal of an asset of the long-term insurance fund as does not exceed its fair value or an asset acquired for at least its fair value which is added to that fund.]

(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, <sup>F94</sup>...

<sup>F94</sup>(b) .....

(6) In subsection (3) above “transfer of business” means—

- <sup>F95</sup>(a) [ a transfer, under an insurance business transfer scheme, of business which 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
- (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).

<sup>F96</sup>(6A) .....

[ A contract which reinsures risk in respect of insurances to be made only after the <sup>F97</sup>(6B) making of the contract of reinsurance can constitute a transfer of business by virtue of subsection (6)(c) above only if a potential advantage is conferred on the reinsurer by the contract.

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- (6C) For the purposes of subsection (6B) above a potential advantage is conferred on the reinsurer by the contract if, taking the contract as “the actual provision” for the purposes of Schedule 28AA to the Taxes Act 1988, the effect of making the actual provision instead of the arm’s length provision (within the meaning of that Schedule) would have in relation to the reinsurer the effect specified in paragraph 5(1)(b) of that Schedule.]
- (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.
- (8) In this section—
- “add”, in relation to an amount and a company’s [F98long-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;
- [F99“fair value”, in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount;]
- “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 F100 ...; 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

- F85** 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)**)
- F86** Word in s. 83 heading substituted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 33 para. 2(10)**
- F87** S. 83(2)-(2E) substituted for s. 83(2) (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 33 para. 2(2)**
- F88** 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**
- F89** Words in s. 83(3) substituted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 33 para. 2(3)(a)**
- F90** Words in s. 83(2)(a)(3) substituted (1.12.2001) by **S.I. 2001/329, art. 60(1)(a)**
- F91** Words in s. 83(3) inserted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 33 para. 2(3)(b)**

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- F92** Words in s. 83(3) substituted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 2\(3\)\(c\)](#)
- F93** S. 83(4)(c) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 2\(4\)](#)
- F94** S. 83(5)(b) and preceding word repealed (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 2\(5\), Sch. 43 Pt. 3\(12\)](#)
- F95** 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\(2\)](#)
- F96** S. 83(6A) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 43 Pt. 3\(12\)](#)
- F97** S. 83(6B)(6C) inserted (with effect in accordance with Sch. 33 para. 2(11) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 2\(6\)](#)
- F98** Words in the definition of “add” in s. 83(8) substituted (1.12.2001) by [S.I. 2001/3629, art. 60\(1\)\(a\)](#)
- F99** Words in s. 83(8) inserted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 2\(8\)](#)
- F100** Words in s. 83(8) repealed (with effect in accordance with Sch. 33 para. 2(11) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 2\(9\), Sch. 43 Pt. 3\(12\)](#)

#### **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 modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\), reg. 33](#) (as amended (8.4.2004) by [S.I. 2004/822, regs. 1, 29](#))
- 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>F101</sup>83ZA] Contingent loans**

- (1) For the purposes of this section a contingent loan is made to an insurance company if—
- a deposit is received by the company from a reinsurer or arises out of insurance operations of the company,
  - a debenture loan is made to the company, or
  - an amount is borrowed by the company from a credit institution,
- and the deposit, debenture loan or amount borrowed is taken into account as a receipt of the company under section 83(2) above.
- (2) For the purposes of this section the time when a contingent loan is made to an insurance company is the time when the assets constituting the deposit, debenture loan or amount borrowed are received by the company.
- (3) For the purposes of this section an insurance company has unrepaid contingent loan liabilities at any time if—
- one or more contingent loans have been made to the company at or before that time, and
  - amounts will or may at some later time become repayable by the company in respect of the contingent loan or contingent loans.
- (4) Where, at the end of the period of account of an insurance company (“the period of account in question”), the company has unrepaid contingent loan liabilities—
- subsection (5) below applies if the company did not have unrepaid contingent loan liabilities at the end of the period of account immediately preceding the period of account in question, and
  - subsection (6) below applies if it did.

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- (5) Where this subsection applies, the appropriate amount for the period of account in question is allowed as a deduction in calculating the profits of the company for the period of account in question.
- (6) Where this subsection applies—
- (a) if the appropriate amount for the period of account in question exceeds the appropriate amount for the immediately preceding period of account, the excess is allowed as a deduction in calculating the profits for the period of account in question, but
  - (b) if the appropriate amount for the immediately preceding period of account exceeds the appropriate amount for the period of account in question, the excess is to be taken into account as a receipt of the period of account in question.
- (7) For the purposes of subsections (5) and (6) above the appropriate amount for a period of account is the amount of the unrepaid contingent loan liabilities at the end of the period of account reduced (but not below nil) by the aggregate of—
- (a) any relevant net transfers to shareholders, and
  - (b) any deficiencies of assets over liabilities received on relevant transferred business.
- (8) In subsection (7)(a) above “relevant net transfers to shareholders” means the aggregate of the positive amounts brought into account as transfers to non-technical account for—
- (a) the period of account,
  - (b) the period of account in which the relevant contingent loan was made to the company, and
  - (c) any period of account falling between the periods of account mentioned in paragraphs (a) and (b) above,
- as reduced in accordance with subsection (9) below.
- (9) The reduction to be made from the positive amount brought into account as a transfer to non-technical account for any of the periods of account mentioned in subsection (8) above is so much of the positive amount as does not exceed 12% of the amount allocated to policy holders as bonuses in relation to the period of account.
- (10) In subsection (7)(b) above “deficiencies of assets over liabilities received on relevant transferred business” means any amount by which, on an insurance business transfer scheme having effect to transfer long-term business from a person (“the transferor”) to the company which has taken place since the time when the relevant contingent loan was made to the company—
- (a) the amount of the liabilities to policy holders and annuitants transferred to the company, exceeded
  - (b) the element of the company’s line 15 figure representing the transferor’s long-term insurance fund.
- (11) In subsections (8) and (10) above “the relevant contingent loan” means—
- (a) if amounts will or may at some later time become repayable by the company in respect of only one contingent loan, that contingent loan, and
  - (b) if amounts will or may at some later time become repayable by the company in respect of more than one contingent loan, whichever of those contingent loans was made to the company first.

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- (12) In subsection (10)(b) above “the element of the company’s line 15 figure representing the transferor’s long-term insurance fund” means so much of the amount brought into account by the company as other income in the period of account in which the transfer took place as represents the assets transferred to the company.
- (13) Where in a period of account of an insurance company—
- (a) an amount becomes repayable under a contingent loan made to the company, and
  - (b) the amount repayable is brought into account as other expenses for the period of account,
- so much of the amount repayable as does not exceed the amount specified in subsection (14) below is allowed as a deduction in calculating the profits of the company for the period of account.
- (14) The amount referred to in subsection (13) above is the amount arrived at by deducting from the amount taken into account as a receipt of the company under section 83(2) above in relation to the contingent loan the aggregate of any amounts which—
- (a) have become repayable in respect of the contingent loan in any earlier period of account, and
  - (b) have been allowed as a deduction in calculating the profits of the company for any such period.
- (15) The references in subsections (8), (12) and (13) above to an amount being brought into account—
- (a) in a case where the amount taken into account as a receipt of the company under section 83(2) above in relation to the contingent loan or loans in question is an amount brought into account in an account concerned wholly with non-participating business, are to its being brought into account in that account or in any other account concerned wholly with non-participating business, and
  - (b) in a case where the amount so taken into account is an amount brought into account in an account concerned wholly or partly with participating business, are to its being brought into account in that account or in any other account concerned wholly or partly with participating business.
- (16) Where—
- (a) a transfer to another fund brought into account for a period of account as other expenditure in any account concerned wholly with non-participating business is brought into account as other income in an account concerned wholly or partly with participating business, or
  - (b) a transfer to another fund brought into account for a period of account as other expenditure in any account concerned wholly or partly with participating business is brought into account as other income in an account concerned wholly with non-participating business,
- subsection (8) above has effect as if it were a positive amount brought into account as transfers to non-technical account for that period of account in the account in which it is brought into account as other expenditure.
- (17) For the purposes of subsections (15) and (16) above—
- (a) an account is concerned wholly with non-participating business if it relates exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus, and

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- (b) an account is concerned wholly or partly with participating business if it relates wholly or partly to other policies or contracts.]

#### Textual Amendments

**F101** S. 83ZA inserted (with effect in accordance with Sch. 33 para. 3(3) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 3\(1\)](#)

#### <sup>F102</sup> 83A **Meaning of “brought into account”.**

- (1) <sup>F103</sup> In sections <sup>F104</sup>82A] to 83AB] “brought into account” means brought into account in an account which is recognised for the purposes of <sup>F105</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>F106</sup>those sections] are—
- a revenue account prepared for the purposes of <sup>F107</sup>Chapter 9 of the Prudential Sourcebook (Insurers)] in respect of the whole of the company’s <sup>F108</sup>long-term] business;
  - any separate revenue account required to be prepared <sup>F109</sup>under that Chapter] in respect of a part of that business.

<sup>F110</sup> .....

- (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>F111</sup>( 5 ) ..... ]

#### Textual Amendments

**F102** 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\(1\)](#))

**F103** 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\(1\)\(a\)](#)

**F104** Word in s. 83A(1) substituted (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(2\)](#)

**F105** 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\(1\)\(b\)](#)

**F106** 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\(2\)](#)

**F107** 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\(1\)\(a\)](#)

**F108** Words in s. 83A(2)(a) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 60\(2\)\(a\)](#)

**F109** 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\(1\)\(b\)](#)

**F110** Words in s. 83A(2) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)

**F111** S. 83A(5) repealed (1.1.1996) by [1996 c. 8, s. 205](#), [Sch. 41 Pt. V\(26\)](#), note

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

**C30** S. 83A modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), regs. 1(2), 36, 37 (as amended (30.1.2003) by [S.I. 2003/23](#), regs. 1, 8; (8.4.2004) by [S.I. 2004/822](#), [regs. 1, 31, 32](#))

**[<sup>F112</sup> 83AA Amounts added to [<sup>F113</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>F114</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.

<sup>F115</sup>(3) .....

<sup>F115</sup>(4) .....

<sup>F115</sup>(5) .....

(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—

<sup>F116</sup>(a) .....

- (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, <sup>F117</sup>...

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<sup>F117</sup>(b) .....

(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;

<sup>F118</sup> .....

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

<sup>F118</sup> .....

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

**Textual Amendments**

**F112** 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](#)

**F113** Words in s. 83AA(3)(4) and the sidenote substituted (1.12.2001) by [S.I. 2001/3629, art. 60\(1\)\(b\)](#)

**F114** Words in the definition of “relevant amount” in s. 83AA(2) substituted (1.12.2001) by [S.I. 2001/3629, art. 60\(1\)\(b\)](#)

**F115** Ss. 83AA(3)-(5) repealed (with effect in accordance with Sch. 33 para. 4(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 4\(1\)\(a\), Sch. 43 Pt. 3\(12\)](#)

**F116** S. 83AA(6)(a) repealed (with effect in accordance with Sch. 33 para. 4(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 4\(1\)\(b\), Sch. 43 Pt. 3\(12\)](#)

**F117** S. 83AA(7)(b) and preceding word repealed (with effect in accordance with Sch. 33 para. 4(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 4\(1\)\(c\), Sch. 43 Pt. 3\(12\)](#)

**F118** Words in s. 83AA(10) repealed (with effect in accordance with Sch. 33 para. 4(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 4\(1\)\(d\), Sch. 43 Pt. 3\(12\)](#)

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

**C31** S. 83AA modified (29.4.1996) by [1996 c. 8, s. 163, Sch. 31 para. 9\(1\)](#)

<sup>F119</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>F120</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—

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



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- (ii) under subsection (6) of [<sup>F122</sup>section 83AA above] , 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>F120</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.
- (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

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reinsured under the contract of reinsurance to the company which is the reinsurer under that contract.]

#### Textual Amendments

- F119** 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**
- F120** Words in s. 83AB(1)(3) substituted (1.12.2001) by S.I. 2001/3629, **art. 60(1)(c)**
- F121** S. 83AB(1)(c)(i) repealed (with effect in accordance with Sch. 33 para. 5(2) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 33 para. 5(1)(a), Sch. 43 Pt. 3(12)**
- F122** Words in s. 83AB(1)(c)(ii) substituted (with effect in accordance with Sch. 33 para. 5(2) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 33 para. 5(1)(b)**

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

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

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

<sup>F123</sup>(1) .....

- (2) Any reference in [<sup>F124</sup>sections 85 to 89 below] or the following provisions of this section to a straddling period is a reference to an accounting period which begins before 1st January 1990 and ends on or after that date.
- (3) For the purposes of [<sup>F125</sup>sections 85 to 89 below] 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

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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

**F123** S. 84(1) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)

**F124** Words in s. 84(2) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 30](#)

**F125** Words in s. 84(3) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 30](#)

### 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>F126</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—

- (a) any premium; <sup>F127</sup> ...
- (b) any sum received by virtue of a claim under an insurance contract (including a re-insurance contract); or
- <sup>F128</sup>(c) .....
- <sup>F128</sup>(ca) .....
- <sup>F128</sup>(d) .....
- (e) any sum which is not within the charge to tax (except under Case I of Schedule D) because of an exemption from tax.

[<sup>F129</sup>(2A) Receipts falling within subsection (1) above are to be taken into account for the purposes of corporation tax when they are brought into account.

Subsection (6) of section 89 (meaning of “brought into account”) shall also apply for the purposes of this section.

(2B) Expenses fall to be deducted from receipts falling within subsection (1) above in accordance with the provisions of the Corporation Tax Acts applicable to Case VI of Schedule D.

(2C) For the purposes of subsection (1) above, a receipt is referable to basic life assurance and general annuity business if—

- (a) in the case of a repayment or refund of acquisition expenses, the acquisition expenses fell within section 86 below,
- (b) in the case of a reinsurance commission, the policy or contract reinsured under the arrangement in respect of which the commission is paid constitutes basic life assurance and general annuity business, and

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- (c) in any other case, it is income which, if it were income from an asset, would by virtue of section 432A of the Taxes Act 1988 (apportionment of insurance companies' income) be referable to basic life assurance and general annuity business.]

- (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

- F126** 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](#).
- F127** Word in s. 85(2)(a) repealed (with effect in accordance with s. 42 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F128** S. 85(2)(c)-(d) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 7\(2\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F129** S. 85(2A)-(2C) inserted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 7\(3\)](#)

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

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

## 86 Spreading of relief for acquisition expenses.

- [<sup>F130</sup>(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 as for that period fall to be included at Step 1 in section 76(7) of the Taxes Act 1988 (expenses of insurance companies)—

- (a) commissions (however described), other than commissions for persons who collect premiums from house to house,
- (b) any other expenses payable solely for the purpose of the acquisition of business,
- (c) so much of any other expenses payable partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,

reduced by the appropriate portion of the adjusted loss deduction (if any) for the purposes of Step 5 for the period.

The appropriate portion of the adjusted loss deduction is the amount which bears to the whole of that deduction the proportion which UAE bears to S1, where—

UAE is the amount of the acquisition expenses, before making the reduction required by this subsection; and

S1 is the sum of the amounts described in paragraphs (a) and (b) in Step 4.]

- (2) The exclusion from paragraph (a) of subsection (1) above of commissions [<sup>F131</sup>for persons who collect premiums from house to house] shall not prevent such commissions constituting [<sup>F132</sup>expenses payable] 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

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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>F133</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>F134</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>F135</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)].

<sup>F136</sup>(5) .....

<sup>F137</sup>(5A) .....

<sup>F138</sup>(6) Only a portion of the acquisition expenses for any accounting period (in this section referred to as “the base period”) is to be relieved under section 76 of the Taxes Act 1988 for that period.

That portion is one-seventh of the adjusted amount of the acquisition expenses for the period.

For the purposes of this section the adjusted amount of the acquisition expenses for the period is so much of those expenses as remains after—

- (a) including the whole of those expenses at Step 1,
- (b) making any reduction in those expenses which is required at Step 2, and
- (c) deducting any amount of reinsurance commission or any repayment or refund (in whole or in part) that falls for the period to be charged to tax under section 85 above,

Effect is given to this subsection at Step 6 (which requires the deduction of six-sevenths of the adjusted amount of the acquisition expenses for the period).]

<sup>F139</sup>(7) .....

<sup>F140</sup>(8) This subsection applies in any case where, in accordance with subsection (6) above, only a fraction of the adjusted amount of the acquisition expenses for the base period is to be relieved under section 76 of the Taxes Act 1988 for that period.

In any such case—

- (a) a further fraction of the adjusted amount of those expenses is to be relieved under that section for each succeeding accounting period after the base period, until the whole of the adjusted amount has been relieved,
- (b) the fraction is one-seventh, except that for any accounting period of less than a year the fraction is to be proportionately reduced, and

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- (c) the relief is given by including that fraction of the adjusted amount at paragraph (b) of Step 8,

but this is subject to subsection (9) below.

- (9) For any accounting period for which—

- (a) the fraction of the adjusted amount of the acquisition expenses for the base period which would otherwise fall to be relieved in accordance with subsection (8) above, exceeds
- (b) the balance of that adjusted amount which has not been so relieved for earlier accounting periods,

only that balance shall be so relieved.]

[<sup>F141</sup>(9A) In this section “expenses payable” has the same meaning as in Step 1.

(9B) Any reference in this section to a numbered Step is a reference to the Step so numbered in section 76(7) of the Taxes Act 1988.]

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

#### Textual Amendments

- F130** S. 86(1) substituted for s. 86(1)-(1B) (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(2\)](#)
- F131** 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\(3\)\(b\)\(10\)](#)
- F132** Words in s. 86(2) substituted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(3\)](#)
- F133** 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](#).
- F134** 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](#).
- F135** 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](#).
- F136** S. 86(5) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(4\)\(a\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F137** S. 86(5A) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(4\)\(b\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F138** S. 86(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(5\)](#)
- F139** S. 86(7) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(6\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F140** S. 86(8)(9) substituted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(7\)](#)
- F141** S. 86(9A)(9B) inserted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(8\)](#)

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

- C34** 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>F142</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<sup>F143</sup> ... the expenses of management are deductible, paragraph (c) below shall apply for that period; and in that paragraph the difference between the amount which maybe so deducted and that amount of profits is referred to as “the potential deficiency” for the period;
  - (c) where this paragraph applies for an accounting period (including the 1990 component period) the carry-forward provision shall be taken to have had effect to carry forward to the accounting period (as if disbursed as expenses

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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

**F142** S. 87(3) repealed by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 123, [Sch. 19 Pt.V](#).

**F143** Words in s. 87(6)(b) repealed (with effect in accordance with Sch. 33 para. 8(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 8\(2\)](#), [Sch. 43 Pt. 3\(12\)](#)

## 88 Corporation tax: policy holders' fraction of profits.

- (1) Subject to subsection (2) <sup>F144</sup>... below, in the case of a company carrying on life assurance business, the rate of corporation tax chargeable for any financial year on
- <sup>F145</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 <sup>F146</sup>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.
- <sup>F147</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—
- <sup>F148</sup>(aa) [ amounts falling in respect of any non-trading deficits on the company's loan 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.]
- <sup>F149</sup>(3A) In subsection (3) above “income and gains of the company's life assurance business” means the aggregate of—
- (a) income and chargeable gains referable <sup>F150</sup>(in accordance with section 432A of the Taxes Act 1988)] to the company's basic life assurance and general annuity business, and
  - (b) profits of the company chargeable under Case VI of Schedule D under sections 436, 439B and 441 of the Taxes Act 1988 (pension business, life reinsurance business and overseas life assurance business).
- (3B) In subsection (3A)(a) above (and section 89(1B) below) “chargeable gains referable <sup>F151</sup>(in accordance with section 432A of the Taxes Act 1988)] to the company's basic



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life assurance and general annuity business”, in relation to an accounting period, means the chargeable gains so far as [<sup>F152</sup>so referable] accruing to the company in the accounting period after deducting—

- (a) any allowable losses so referable accruing to the company in the accounting period, and
  - (b) so far as they have not been allowed as a deduction from chargeable gains in any previous accounting period, any allowable losses so referable previously accruing to the company.]
- (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>F153</sup>share] of the company’s relevant profits for that period [<sup>F154</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.

#### Textual Amendments

- F144** Words in s. 88(1) repealed (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(2\)\(a\)](#), [Sch. 43 Pt. 3\(12\)](#)
- F145** Words in s. 88(1) substituted (and deemed always to have had effect) by [Finance Act 1990 \(c. 29\)](#), [s. 45\(1\)\(10\)](#)
- F146** Word in s. 88(1) substituted (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(2\)\(b\)](#)
- F147** 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\(1\)](#))
- F148** 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](#))
- F149** S. 88(3A)(3B) inserted (with effect in accordance with Sch. 33 para. 6(12) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(1\)](#)
- F150** Words in s. 88(3A)(a) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 9\(2\)\(a\)](#)
- F151** Words in s. 88(3B) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 9\(2\)\(b\)](#)
- F152** Words in s. 88(3B) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 9\(2\)](#)
- F153** Word in s. 88(4) substituted (and deemed always to have had effect) by [Finance Act 1990 \(c. 29\)](#), [s. 45\(2\)\(10\)](#)
- F154** Words in s. 88(4) inserted (and deemed always to have had effect) by [Finance Act 1990 \(c. 29\)](#), [s. 45\(2\)\(10\)](#)

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

- C35** S. 88(3A)(a) modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/437\)](#), [reg. 39A](#) (as inserted (8.4.2004) by [S.I. 2004/822](#), [regs. 1, 33](#))

<sup>F155</sup>**88A Lower corporation tax rate on certain insurance company profits.**

.....

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**Textual Amendments**

**F155** S. 88A repealed (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), Sch. 33 para. 13(3), [Sch. 43 Pt. 3\(12\)](#)

**[<sup>F156</sup> 89 Policy holders’ share of profits.**

(1) The references in [<sup>F157</sup>section 88] above to the policy holders’ share of the relevant profits for an accounting period of a company carrying on life assurance business <sup>F158</sup>... are references to —

- [<sup>F159</sup>(a) in a case where there are no Case I profits of the company for the period in respect of its life assurance business, the amount of the relevant profits, and
- (b) in any other case, the amount arrived at in accordance with subsection (1A) below.]

[ An amount is arrived at in accordance with this subsection by—

- <sup>F160</sup>(1A) (a) deducting from any profits of the company for the period chargeable under Case VI of Schedule D under sections 436, 439B and 441 of the Taxes Act 1988 (as reduced by any losses under those sections and any charges on income referable to any category of business other than basic life assurance and general annuity business) so much of the Case I profits of the company for the period in respect of its life assurance business as does not exceed the amount of any profits of the company for the period so chargeable, and
- (b) deducting any remaining Case I profits of the company for the period in respect of its life assurance business from any BLAGAB profits of the company for the period.

(1B) For the purposes of this section, the BLAGAB profits of a company for an accounting period are the income and chargeable gains referable [<sup>F161</sup>(in accordance with section 432A of the Taxes Act 1988)] to 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.]

(2) For the purposes of [<sup>F162</sup>subsections (1) and (1A)] above, the Case I profits for a period shall be reduced by—

- <sup>F163</sup>(a) .....
- (b) the shareholders’ share of any <sup>F164</sup>... [<sup>F165</sup>distributions received from companies resident in the United Kingdom in the period which are][<sup>F166</sup>referable [<sup>F167</sup>(in accordance with section 432A of the Taxes Act 1988)] to the company’s basic life assurance and general annuity business][<sup>F168</sup>, and
- (c) the shareholders’ share of any foreign income dividends arising to the company in the period [<sup>F169</sup>which are referable to the company’s basic life assurance and general annuity business].]

[ For the purposes of subsection (2) above—

<sup>F170</sup>(2A)

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- (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>F171</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;
  - (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 [<sup>F172</sup>Chapter 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—  
<sup>F173</sup>(7)

“Case I profits” means profits computed in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D [<sup>F174</sup>and adjusted in respect of losses in accordance with section 76(2C) and (2D) of the Taxes Act 1988;]

<sup>F175</sup>..... ]

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F176(8) . . . . . ]

### Textual Amendments

- F156** S. 89 substituted retrospectively by [Finance Act 1990 \(c. 29\)](#) {s. 45(3)}
- F157** Words in s. 89(1) substituted (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(4\)\(a\)](#)
- F158** Words in s. 89(1) repealed (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(4\)\(b\)](#), [Sch. 43 Pt. 3\(12\)](#)
- F159** S. 89(1)(a)(b) substituted (with effect in accordance with Sch. 33 para. 6(12) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(3\)](#)
- F160** S. 89(1A)(1B) inserted (with effect in accordance with Sch. 33 para. 6(11)(12) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(4\)](#)
- F161** Words in s. 89(1B) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 9\(2\)\(e\)](#)
- F162** Words in s. 89(2) substituted (with effect in accordance with Sch. 33 para. 13(12) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(5\)](#)
- F163** 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
- F164** 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
- F165** Words in s. 89(2)(b) substituted (with effect in accordance with Sch. 33 para. 12(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 12\(4\)](#)
- F166** 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\(2\)\(b\)\(ii\)\(4\)](#)
- F167** Words in s. 89(2)(b) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 9\(2\)\(d\)](#)
- F168** 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
- F169** 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\(2\)\(c\)\(4\)](#)
- F170** 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
- F171** Word in s. 89(5)(a) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 60\(3\)](#)
- F172** Words in s. 89(6) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 58\(2\)](#)
- F173** S. 89(7) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 58\(3\)](#)
- F174** Words in s. 89(7) inserted (with effect in accordance with Sch. 33 para. 7(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 7\(1\)](#)
- F175** Words in s. 89(7) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)
- F176** 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

### Modifications etc. (not altering text)

- C36** S. 89 amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by [1993 c. 34, s. 78\(6\)\(11\)](#)
- C37** S. 89(1B) applied (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(11\)](#)
- C38** S. 89(1B) modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/437\)](#), [reg. 40A\(1\)](#) (as inserted (8.4.2004) by [S.I. 2004/822](#), [regs. 1, 35](#))

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[<sup>F177</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**

**F177** 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.

[<sup>F178</sup>**90A Interpretation**

Expressions used in any of sections 82 to 90 above (or Schedule 8A to this Act) and in Chapter 1 of Part 12 of the Taxes Act 1988 have the same meaning in those sections (or that Schedule) as in that Chapter.]

**Textual Amendments**

**F178** S. 90A inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 33 para. 31](#)

*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>F179</sup>(2) .....

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(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.

**Textual Amendments**

**F179** 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.”

- F180(3) .....
- F181(4) .....
- F181(5) .....
- F181(6) .....
- F181(7) .....

**Textual Amendments**

**F180** [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](#))

**F181** [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*

F182**93** .....

**Textual Amendments**

**F182** [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

*Status: Point in time view as at 22/07/2004.*

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

F183 94 .....

**Textual Amendments**

**F183** 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

F184 95 .....

**Textual Amendments**

**F184** 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;”.

F185 (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 22/07/2004.*

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

#### Textual Amendments

- F185** 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>F186</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

- F186** 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>F187</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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(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**

**F187** 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

**F188**99 .....

**Textual Amendments**

**F188** 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>F189</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>F190</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>M6</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 [F191 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 [F192 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

**F189** S. 102(4A) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 11**

**F190** Words in s. 102(4A) substituted (1.5.1995) by 1995 c. 4, s. 130, **Sch. 24 Pt. II para. 12(3)**

**F191** 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)

**F192** 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)

**C39** S. 102 applied (with modifications) (7.1.1999) by S.I. 1998/3175, **reg. 9(1)**

#### Marginal Citations

**M6** 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>F193</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**

**F193** 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.*

**F194 108** .....

**Textual Amendments**

**F194** 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.**

**F195**(1) .....

**F195**(2) .....

**F195**(3) .....

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

**Textual Amendments**

**F195** 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>M7</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>M8</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**

**M7** 1925 c.23.

**M8** 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>F196</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**

**F196** 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)**

**C40** 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)**

- C41** 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.

**F197 116** .....

**Textual Amendments**

**F197** [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



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**Changes to legislation:**

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