

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, SCHEDULE 16. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 16

Section 181.

BROADCASTING: ADDITIONAL PAYMENTS BY PROGRAMME CONTRACTORS

Textual Amendments

- F1** S. 181, Sch. 16 repealed (prosp. as mentioned in S.I. 1990/2347, art. 3(3)) by Broadcasting Act 1990 (c. 42, SIF 96), ss. 127-129, 134, 203(3), 204(2), Schs. 9-12, Sch. 21

PART I

AMENDMENTS OF THE PRINCIPAL SECTIONS

- 1 (1) Section 32 of the ^{M1}Broadcasting Act 1981 (rental payments by programme contractors) shall be amended as follows.
- (2) In subsection (1)(b), after the word “amounts” there shall be inserted the words “in respect of profits and in respect of advertising revenue”.
- (3) In subsection (2)(b), after the word “amounts” there shall be inserted the words “in respect of profits”.
- (4) In subsection (4), for the word “Table”, where it first occurs, there shall be substituted the word “Tables” and the following Tables shall be substituted for the Table in that subsection—

“TABLE A

RATES OF ADDITIONAL PAYMENTS IN RESPECT OF ADVERTISING REVENUE

	<i>Rate for determining amount of additional payments</i>
For so much of the advertising revenue for the accounting period as does not exceed the free slice for advertising revenue.	Nil
For so much of the advertising revenue for the accounting period as exceeds the free slice for advertising revenue.	The relevant revenue rate except where the rate is nil

For the purposes of this Table—

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- (a) a nil rate, instead of the relevant revenue rate, is applicable in the case of persons who are DBS programme contractors or DBS teletext contractors;
- (b) the relevant revenue rate is 10 per cent; and
- (c) the free slice for advertising revenue is £15 million or, in the case of a TV programme contractor, that amount with the addition of the payments payable by him in pursuance of section 13(2).

TABLE B

RATES OF ADDITIONAL PAYMENTS IN RESPECT OF PROFITS

For so much of the profits for the accounting period after deducting any amount payable under Table A as does not exceed the free slice for profits.	Nil
For so much of the profits for the accounting period after deducting any amount payable under Table A as exceeds the free slice for profits.	The relevant profits rate except where the rate is nil.

For the purposes of this Table—

- (a) a nil rate, instead of the relevant profits rate, is applicable in the case of—
 - (i) programme contractors who provide local sound broadcasts, and
 - (ii) DBS programme contractors or DBS teletext contractors;
 - (b) the relevant profits rate is 25 per cent; and
 - (c) the free slice for profits is £2 million.”
- (5) Subsection (4A) shall be omitted.
- (6) In subsection (5), for the words “relevant sum mentioned in subsection(4A)” there shall be substituted the words “relevant sum mentioned in the Tables above”.
- (7) In subsection (7), after the words “additional payments” there shall be inserted the words “in respect of profits”.
- (8) In subsection (8), for the words “any of the provisions of subsections(4), (4A)” there shall be substituted the words “any of the provisions of subsections (4)”.
- (9) For subsection (9) there shall be substituted the following subsections—

“(9) The power of the Secretary of State under subsection (8) shall include power to amend the provisions in question as there mentioned—

- (a) only in their application in relation to the additional payments mentioned in subsection (1)(b); or
- (b) only in their application in relation to the additional payments mentioned in subsection (2)(b); or
- (c) differently in their application as mentioned in paragraphs (a) and (b) respectively; or

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- (d) only in their application in relation to additional payments in respect of advertising revenue; or
 - (e) only in their application in relation to additional payments in respect of profits; or
 - (f) differently in their application as mentioned in paragraphs (d) and (e) respectively.
- (9A) In the application of the provisions mentioned in subsection (8) in relation to the additional payments mentioned in subsection (1)(b), the power of the Secretary of State under subsection (8) shall also include power to amend those provisions as mentioned in subsection (8)—
- (a) only in relation to persons who are TV programme contractors (including persons who are both TV programme contractors and teletext contractors); or
 - (b) only in relation to persons who are DBS programme contractors (including persons who are both DBS programme contractors and teletext contractors); or
 - (c) only in relation to persons who are teletext contractors (other than DBS teletext contractors) but are not TV or DBS programme contractors; or
 - (d) only in relation to persons who are DBS teletext contractors but are not TV or DBS programme contractors; or
 - (e) differently in relation to persons within paragraphs (a), (b), (c) and (d) respectively.”

Marginal Citations

M1 1981 c. 68.

- 2 (1) Section 33 of the ^{M2}Broadcasting Act 1981 (supplemental provisions) shall be amended as follows.
- (2) In subsection (1), for the words “advertising receipts” there shall be substituted the words “advertising revenue”.
 - (3) In subsection (2), for the words “advertising receipts” there shall be substituted the words “advertising revenue” and for the words “those receipts derive” there shall be substituted the words “the revenue derives”.
 - (4) In subsection (3)(c), for the words “advertising receipts” there shall be substituted the words “advertising revenue” and for the word “derive” there shall be substituted the word “derives”.

Marginal Citations

M2 1981 c. 68.

- 3 (1) Section 34 of the Broadcasting Act 1981 (instalments payable on account by programme contractors for their accounting periods) shall be amended as follows.
- (2) In subsection (3)(c), for the words “receipts are” there shall be substituted the words “revenue is”.

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- 4 (1) Section 35 of the ^{M3}Broadcasting Act 1981 (provision for supplementing additional payments) shall be amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), after the words “additional payments” there shall be inserted the words “in respect of profits”;
 - (b) in paragraph (b)(ii), the words “in the case of second category profits,” shall be omitted; and
 - (c) at the end, there shall be added the words “in respect of profits of his for that period”.

Marginal Citations

M3 1981 c. 68.

PART II

PROVISIONS INSERTED AS SCHEDULE 4 TO THE BROADCASTING ACT 1981

“SCHEDULE 4

RENTAL PAYMENTS

Advertising revenue

- 1 (1) The advertising revenue of a programme contractor for an accounting period shall be computed in accordance with this paragraph.
- (2) Advertising revenue shall consist of the payments received or to be received by the programme contractor in consideration of the insertion of advertisements in programmes provided by the programme contractor and broadcast in the United Kingdom by the Authority.
- (3) In the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), the advertising revenue of a programme contractor other than a teletext contractor who is not a TV programme contractor includes payments received or to be received by him in consideration of the insertion of programmes consisting of advertisements provided by him for broadcasting on the Fourth Channel and so broadcast.
- (4) If, in connection with the insertion of advertisements which are paid for by payments constituting advertising revenue, any payments are made to the programme contractor to meet any additional payments, those payments shall be regarded as made in consideration of the insertion of the advertisements in question.
- (5) In the case of an advertisement inserted in a programme under arrangements made between a programme contractor and a person acting as advertising agent, the amount of any receipt by the programme contractor which represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within sub-paragraph (6), be the amount of the payment by the advertiser after the deduction of the commission.

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- (6) If the amount deducted by way of commission as mentioned in sub-paragraph(5) exceeds 15 per cent. of the payment by the advertiser, the amount of thereceipt shall be the amount of that payment less 15 per cent.
- (7) Any contract shall provide that where for any insertion of anadvertisement a programme contractor receives or is entitled to an entireconsideration not solely referable to that insertion, the advertising revenueshall be calculated by reference to so much only of the consideration as isreferable to that insertion according to an apportionment made in such manneras the contract may provide.

Profits

- 2 (1) The profits of a programme contractor for an accounting period shall becomputed in accordance with this paragraph.
- (2) The profits shall consist of the excess of relevant income over relevantexpenditure.
- (3) “Relevant income” means—
- (a) in relation to a programme contractor other than a DBS programmecontractor or a DBS teletext contractor, income which accrues to thecontractor in connection (directly or indirectly) with—
- (i) the provision by the contractor of programmes for broadcasting on ITV, theFourth Channel or a local sound broadcasting service, or
- (ii) the provision by the contractor, for broadcasting, distribution or showingin the United Kingdom, of programmes provided by him for broadcasting on ITV,the Fourth Channel or a local sound broadcasting service;
- (b) in relation to a DBS programme contractor or DBS teletext contractor,income which accrues to the contractor in connection (directly or indirectly)with—
- (i) the provision by the contractor to the Authority, in accordance with theterms of his contract as a DBS programme contractor or (as the case may be)DBS teletext contractor, of programmes for broadcasting in the Authority’s DBSService to which his contract with the Authority relates, or
- (ii) the provision by the contractor, for broadcasting, distribution or showingin the United Kingdom, of programmes broadcast in the Authority’s DBS service.
- (4) Without prejudice to the generality of sub-paragraph (3), “relevant income” includes—
- (a) all revenue which is advertising revenue for the purposes of thisparagraph; and
- (b) such part of any income which—
- (i) accrues to any subsidiary of or company related to the programmecontractor or to the contractor’s holding company, and
- (ii) would be relevant income of that contractor if he and the subsidiary orrelated company or his holding company were a single programme contractor,
- as, in the opinion of the Authority, should be attributed to thecontractor as reflecting his financial interest in the subsidiary or therespective financial interests of the holding company in the contractor andthe company related to the contractor or the financial interest of the holdingcompany in the contractor, as the case may be.

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- (5) For the purposes of this paragraph advertising revenue includes—
- (a) in relation to a DBS programme contractor, payments received or to be received by him in respect of charges made for the reception of programmes provided by him and broadcast in a DBS service;
 - (b) in relation to a teletext contractor, payments received or to be received by him in respect of charges made for the reception of programmes provided by him and broadcast in a DBS or additional teletext service.
- (6) “Relevant expenditure” means any expenditure of the programme contractor which is properly chargeable to revenue account and which is incurred in connection with the provision by him of programmes of a kind mentioned in sub-paragraph (3).
- (7) Without prejudice to the generality of sub-paragraph (6), “relevant expenditure” includes—
- (a) expenditure in connection with the sale of rights to insert advertisements in programmes; and
 - (b) such part of any expenditure which—
 - (i) is incurred by any subsidiary of or company related to the programme contractor or by the contractor’s holding company, and
 - (ii) would be relevant expenditure of that contractor if he and the subsidiary or related company or his holding company were a single programme contractor,
 as, in the opinion of the Authority, should be attributed to the contractor as reflecting his financial interest in the subsidiary or the respective financial interests of the holding company in the contractor and the company related to the contractor or the financial interest of the holding company in the contractor, as the case may be;
 - (c) in the case of a DBS programme contractor or a teletext contractor, any expenditure incurred in connection with the collection of charges for the reception of programmes provided by him and broadcast in a DBS service or in a DBS or additional teletext service, as the case may be; and
 - (d) in the case of a DBS programme or DBS teletext contractor, any expenditure incurred in connection with the provision of the satellite transponder.
- (8) In ascertaining relevant income or relevant expenditure no account shall be taken of interest on any loan.
- (9) Items of relevant income and items of relevant expenditure shall be attributed to accounting periods in accordance with the foregoing provisions of this Schedule.
- (10) In this paragraph “programme” means—
- (a) in the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), a television programme; and
 - (b) in the application of this Schedule in relation to the additional payments mentioned in section 32(2)(b), a local sound broadcast.

Carry forward of losses

- 3 (1) Where, in any accounting period, the relevant expenditure of a programme contractor exceeds his relevant income, the excess shall be carried forward to the following

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accounting period and treated as relevant expenditure for that period for the purpose of computing his profits for that period.

- (2) When a programme contractor's contract with the Authority comes to an end, no losses incurred at any time during the currency of that contract may be carried forward under this paragraph and set against income attributable to any subsequent contract between him and the Authority.

Computation of profits of programme contractors

- 4 (1) It shall be the duty of the Authority—
- (a) to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining, for any accounting period, a programme contractor's—
 - (i) advertising revenue, and
 - (ii) relevant income and relevant expenditure for the purpose of computing his profits;
 - (b) in computing the advertising revenue and the profits of a programme contractor for any accounting period, to take account of that statement (including any revision thereof which has taken effect before the end of that period).
- (2) A statement under this paragraph may set out different principles for TV programme contractors, DBS programme contractors, programme contractors for the provision of local sound broadcasting and teletext contractors.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
 - (b) transmit a copy of the statement, and of every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.
- (5) The principles relating to advertising revenue and to profits may be set out in separate statements under this paragraph; and where this is done its provisions apply to each statement.

Disputes

- 5 (1) For the purposes of the principal sections and this Schedule—
- (a) the amount of any advertising revenue, or
 - (b) the amount of any profits, or
 - (c) the amount of any additional payments, or of an instalment of additional payments,
- shall, in the event of a disagreement between the Authority and the programme contractor, be the amount determined by the Authority.
- (2) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

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Accounting periods

- 6 (1) Subject to the provisions of this Schedule, each period for which a body corporate which is a programme contractor makes up a profit and loss account which is laid before the body corporate in general meeting shall be an accounting period, whether that period is a year or not.
- (2) If part of the said period for which a profit and loss account is made up falls before, and part after—
- (a) the commencement of a relevant order under section 32, or
 - (b) the time when the programme contractor begins or ceases to provide programmes for broadcasting by the Authority,
- the two parts shall be treated as separate accounting periods.

In paragraph (a) “relevant order” means, in the application of this Schedule in relation to the additional payments mentioned in subsection (1)(b) or (as the case may be) subsection (2)(b) of section 32, an order having effect in relation to those payments.

- (3) Where two parts of such a period as is mentioned in sub-paragraph (1) fall to be divided from each other under sub-paragraph (2)(a), section 32(4) shall have effect as if the profits and advertising revenue for each part were the profits and advertising revenue for the whole multiplied by—

$$\frac{X}{X + Y}$$

where X and Y are respectively the number of weeks in that part and the number of weeks in the other part, counting (in each case) an odd four days or more as a week.

- (4) If sub-paragraph (2)(b) would produce an accounting period of three months or less, that period shall be added on to the accounting period (if any) which precedes or succeeds it (and which does not fall to be divided from it under sub-paragraph (2)(b)).
- (5) A contract which varies another contract may modify the preceding provisions of this paragraph.
- (6) Nothing in this paragraph shall create an accounting period during which the programme contractor is not providing programmes for broadcasting by the Authority.
- 7 If a programme contractor is not a body corporate the contractor’s accounting periods shall be such as the Authority may direct, or as may be provided in the contract.

Information

- 8 (1) Every contract shall impose on the contractor such requirements with respect to the furnishing of information to the Authority as appear to the Authority, after consultation with the Secretary of State, to be requisite—
- (a) for enabling the Authority to perform their functions under the provisions of the principal sections and this Schedule, and
 - (b) for enabling the Authority to furnish to the Secretary of State such information as he may require for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.

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- (2) Without prejudice to the generality of sub-paragraph (1), the duty imposed on the Authority by that sub-paragraph includes the duty to impose, so far as is reasonably practicable, such requirements as will enable the Authority to determine the amounts (if any) which, in relation to any programme contractor, are to be treated as advertising revenue and relevant income and relevant expenditure for the computation of profits by virtue, respectively, of paragraphs 1 and 2.
- (3) It shall be the duty of the Authority to furnish to the Secretary of State such information (whether obtained from contractors or otherwise) as is in their possession and is required by the Secretary of State for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.
- 9 It shall be the duty of the Authority in framing any contract to include terms ensuring that the Authority will have the right to inspect accounts and records—
- (a) of the programme contractor, and
 - (b) of any subsidiary of the programme contractor,
- for the purpose of discharging their functions under the principal sections and this Schedule.

Interpretation

- 10 (1) In this Schedule, and in the principal sections, except where the context otherwise requires—
- “accounting period” shall be construed in accordance with paragraph 6;
- “additional payments” and “contract”—
- (a) in the application of this Schedule and the principal sections in relation to the additional payments mentioned in section 32(1)(b), mean respectively additional payments payable by virtue of that paragraph and a contract between the Authority and a programme contractor under which television programmes are to be provided by the programme contractor, and
 - (b) in their application in relation to the additional payments mentioned in section 32(2)(b), mean respectively additional payments payable by virtue of that paragraph and a contract between the Authority and a programme contractor under which local sound broadcasts are to be provided by the programme contractor;
- “related”, in relation to a company and a programme contractor, means that another person (whether alone or jointly with one or more persons and whether directly or indirectly) holds, or is beneficially entitled to, 50 per cent or more of the equity share capital, or possesses 50 per cent or more of the voting power, in the company and in the programme contractor and “holding company” means that other person; and
- “subsidiary”, in relation to any person, means a company in which that person (whether alone or jointly with one or more persons and whether directly or indirectly) holds, or is beneficially entitled to, 10 per cent or more of the equity share capital, or possesses 10 per cent or more of the voting power.
- (2) In this Schedule “payment” includes any valuable consideration, and references to revenue and receipts and expenditure shall be construed accordingly.”

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PART III

TRANSITIONAL PROVISIONS

- 1 (1) In this paragraph—
- “new statutory provisions” means the provisions of the ^{M4}Broadcasting Act 1981 as amended by this Act; and
- “existing statutory provisions” means the provisions of that Act as they had effect immediately before the coming into force of section 181.
- (2) Any contract between the Authority and a programme contractor which is in force immediately before the day on which section 181 of this Act comes into force shall, until it is varied or superseded by a further contract between them or expires or is otherwise terminated (whichever first occurs), be deemed to be modified by virtue of this Schedule so as—
- (a) to substitute provisions in conformity with the new statutory provisions for so much of the contract as is in accordance with the existing statutory provisions and is not in conformity with the new statutory provisions, and
 - (b) to incorporate in the contract such additional provisions as a contract between the Authority and a programme contractor is required to include in accordance with the new statutory provisions;
- and (subject to paragraph 5 of Schedule 4 to the 1981 Act) any provisions of the contract which provide for arbitration as to any matters contained in the contract in accordance with the existing statutory provisions shall be construed as making the like provision for arbitration in relation to matters deemed to be included in the contract by virtue of this sub-paragraph.
- (3) Where it appears to the Authority that the new statutory provisions call for the inclusion of additional terms in any such contract, but do not afford sufficient particulars of what those terms should be, the Authority may, after consulting the programme contractor, decide what those terms are to be.
- (4) This paragraph shall not be taken to have effect in relation to any contract entered into by a programme contractor and any person other than the Authority before the day on which section 181 of this Act comes into force.

Marginal Citations

M4 1981 c. 68.

- 2 Where any accounting period of a programme contractor begins before 1st January 1990 and ends after 31st December 1989, the additional payments payable by the programme contractor in relation to that accounting period under section 32 of the ^{M5}Broadcasting Act 1981 shall be the aggregate of—
- (a) the amounts payable by him on the assumption that section 181 of this Act was not in force at any time during the accounting period, multiplied by—

$$\frac{X}{X+Y},$$

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and

- (b) the amounts payable by him on the assumption that that section was in force throughout the accounting period, multiplied by—

$$\frac{Y}{X + Y};$$

where (taking any odd four days or more as a week)—

X is the number of weeks in the accounting period falling before 1st January 1990, and

Y is the number of weeks in the accounting period falling after 31st December 1989.

Marginal Citations

M5 1981 c. 68.

- 3 Where, under the existing statutory provisions, any excess of first category expenditure over first category income of a programme contractor would have been carried forward and treated as relevant first category expenditure of his for an accounting period ending after 31st December 1989 if those provisions had applied in relation to that period then the excess shall be carried forward and treated, under the new statutory provisions, as relevant expenditure of the contractor for any accounting period which ends after that date.
- 4 In this Part of this Schedule, references to programme contractors shall be read as including references to teletext contractors.]

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