



# Finance Act 1996

## 1996 CHAPTER 8

### PART I

#### EXCISE DUTIES

##### *Alcoholic liquor duties*

#### **1 Spirits: rate of duty.**

- (1) In section 5 of the <sup>M1</sup>Alcoholic Liquor Duties Act 1979 (spirits), for “£20.60” there shall be substituted “ £19.78 ”.
- (2) This section shall be deemed to have come into force at 6 o’clock in the evening of 28th November 1995.

#### **Marginal Citations**

M1 1979 c. 4.

#### **2 Wine and made-wine: rates.**

- (1) In the Table of rates of duty in Schedule 1 to the Alcoholic Liquor Duties Act 1979 (wine and made-wine)—
  - (a) in Part I of the Table for “200.64”, where it appears as the rate for wine or made-wine of a strength exceeding 15 per cent. but not exceeding 22 per cent., there shall be substituted “ 187.24 ”; and
  - (b) in Part II of that Table (wine or made-wine of a strength exceeding 22 per cent.), for “20.60” there shall be substituted “ 19.78 ”.
- (2) Paragraph (a) of subsection (1) above shall be deemed to have come into force on 1st January 1996 and paragraph (b) shall be deemed to have come into force at 6 o’clock in the evening of 28th November 1995.

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VALID FROM 01/10/1996

### 3 Cider: rate of duty.

- (1) In subsection (1) of section 62 of the <sup>M2</sup>Alcoholic Liquor Duties Act 1979 (cider), for “rate of £23.78 per hectolitre” there shall be substituted “ rates shown in subsection (1A) below. ”
- (2) After that subsection there shall be inserted the following subsection—
  - “(1A) The rates at which the duty shall be charged are—
    - (a) £35.67 per hectolitre in the case of cider of a strength exceeding 7.5 per cent.; and
    - (b) £23.78 per hectolitre in any other case.”
- (3) This section shall come into force on 1st October 1996.

#### Marginal Citations

M2 1979 c. 4.

### *Hydrocarbon oil duties*

### 4 Rates of duty and rebate.

- (1) In section 6(1) of the <sup>M3</sup>Hydrocarbon Oil Duties Act 1979, for “£0.3614” (duty on light oil) and “£0.3132” (duty on heavy oil) there shall be substituted “ £0.3912 ” and “ £0.3430 ”, respectively.
- (2) In section 8(3) of that Act (duty on road fuel gas), for “£0.3314” there shall be substituted “ £0.2817 ”.
- (3) In section 11(1) of that Act (rebate on heavy oil), for “£0.0166” (fuel oil) and “£0.0214” (gas oil) there shall be substituted “ £0.0181 ” and “ £0.0233 ”, respectively.
- (4) In subsection (1) of section 13A of that Act (rebate on unleaded petrol), for “the rate of £0.0482 a litre” there shall be substituted “ the rate specified in subsection (1A) below ”; and after that subsection there shall be inserted the following subsections—
  - “(1A) The rate of rebate shall be—
    - (a) £0.0150 a litre in the case of higher octane unleaded petrol; and
    - (b) £0.0482 a litre in any other case.
  - (1B) For the purposes of this section unleaded petrol is “higher octane” if—
    - (a) its research octane number is not less than 96 and its motor octane number is not less than 86;
    - (b) it is delivered for home use as petrol which satisfies the condition set out in paragraph (a) above;
    - (c) it is delivered for home use as petrol which is suitable to be used as fuel for engines for which leaded petrol is suitable by virtue of being leaded; or

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- (d) it is delivered for home use under such a description, or in such a manner, as tends, in the circumstances, to suggest that it is—
- (i) petrol satisfying the condition set out in paragraph (a) above; or
  - (ii) petrol suitable to be used as fuel for engines for which leaded petrol is suitable by virtue of being leaded.
- (1C) The method of testing unleaded petrol for ascertaining, for the purposes of this section, its research octane number or motor octane number shall be such as the Commissioners may direct.”
- (5) In subsection (2) of that section (meaning of “unleaded”), for the words from “or, if” onwards there shall be substituted “; and petrol is “leaded” for the purposes of this section if it is not unleaded. ”
- (6) In section 14(1) of that Act (rebate on light oil for use as furnace fuel), for “£0.0166” there shall be substituted “ £0.0181 ”.
- (7) Subsections (1) to (3) and (6) above shall be deemed to have come into force at 6 o’clock in the evening of 28th November 1995; and subsection (4) above shall come into force on 15th May 1996.

#### Commencement Information

**II** S. 4 partly in force at 28.11.1995 see s. 4(7).

#### Marginal Citations

**M3** 1979 c. 5.

## 5 Misuse of rebated kerosene.

- (1) The <sup>M4</sup>Hydrocarbon Oil Duties Act 1979 shall be amended as mentioned in subsections (2) to (5) below.
- (2) In section 11(1) (rebate on heavy oil), for “and 13” there shall be substituted “ 13, 13AA and 13AB ”.
- (3) In section 12(2) (restriction on use of rebated heavy oil for road vehicles), after “allowed” there shall be inserted “ (whether under section 11(1) above or 13AA(1) below) ”.
- (4) After section 13 there shall be inserted the following sections—

### “13AA Restrictions on use of rebated kerosene.

- (1) If, on the delivery of kerosene for home use, it is intended to use the kerosene as fuel for—
  - (a) an engine provided for propelling an excepted vehicle, or
  - (b) an engine which is used neither for propelling a vehicle nor for heating,

a declaration shall be made to that effect and thereupon rebate shall be allowed at the rate for rebated gas oil which is then in force, instead of at the rate then in force under section 11(1)(c) above.

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- (2) Subject to subsection (3) below, no kerosene on whose delivery for home use a rebate at the rate given by section 11(1)(c) above has been allowed shall—
- (a) be used as fuel for an engine provided for propelling an excepted vehicle;
  - (b) be used as fuel for an engine which is used neither for propelling a vehicle nor for heating; or
  - (c) be taken into the fuel supply of an engine falling within paragraph (a) or (b) above.
- (3) Subsection (2) above does not apply to any quantity of kerosene in respect of which there has been paid to the Commissioners an amount equal to duty on the same quantity of gas oil at the rate for rebated gas oil which is in force at the time of the payment.
- (4) A payment under subsection (3) above shall be made in accordance with regulations made under section 24(1) below for the purposes of this section.
- (5) For the purposes of this section and section 13AB below—
- “excepted vehicle” means a vehicle which is an excepted vehicle under any provision of Schedule 1 to this Act; and
- “kerosene” means heavy oil of which more than 50 per cent. by volume distils at a temperature of 240°C or less.
- (6) For the purposes of this section and section 13AB below the rate for rebated gas oil which is in force at any time is the rate of duty which at that time is in force under section 6(1) above in the case of heavy oil as reduced by the rate of rebate allowable at that time under section 11(1)(b) above.

### **13AB Penalties for misuse of kerosene.**

- (1) If a person uses kerosene in contravention of section 13AA(2) above—
- (a) the Commissioners may recover from him, in respect of the quantity of kerosene used, an amount equal to duty on the same quantity of gas oil at the rate for rebated gas oil which is in force at the time of the contravention;
  - (b) his use of the kerosene shall attract a penalty under section 9 of the <sup>M5</sup>Finance Act 1994 (civil penalties); and
  - (c) if he uses the kerosene with the relevant intent, he shall be guilty of an offence.
- (2) If a person is liable for kerosene being taken into a fuel supply of an engine in contravention of section 13AA(2) above—
- (a) the Commissioners may recover from him, in respect of the quantity of kerosene taken into the fuel supply, an amount equal to duty on the same quantity of gas oil at the rate for rebated gas oil which is in force at the time of the contravention;
  - (b) his becoming so liable shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties); and
  - (c) if he has the relevant intent in relation to the kerosene being taken into the fuel supply, he shall be guilty of an offence.

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- (3) For the purposes of subsection (2) above, a person is liable for kerosene being taken into a fuel supply of an engine if at the time—
- (a) he has the charge of the engine; or
  - (b) subject to subsection (4) below, he is the owner of the engine.
- (4) If a person other than the owner is for the time being entitled to possession of the engine, that other person and not the owner is liable.
- (5) If—
- (a) a person supplies kerosene having reason to believe that it will be put to a particular use, and
  - (b) that use is one which, if a payment is not made under subsection (3) of section 13AA above, will contravene subsection (2) of that section, his supplying the kerosene shall attract a penalty under section 9 of the <sup>M6</sup>Finance Act 1994 (civil penalties) and, if he makes the supply with the relevant intent, he shall be guilty of an offence.
- (6) In this section “the relevant intent” means the intent that the restrictions imposed by section 13AA(2) above shall be contravened.
- (7) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum, or to imprisonment for a term not exceeding 6 months, or to both;
  - (b) on conviction on indictment, to a penalty of any amount, or to a term of imprisonment not exceeding 7 years, or to both.
- (8) Any kerosene falling within subsection (9) or (10) below is liable to forfeiture.
- (9) Kerosene falls within this subsection if it is taken into a fuel supply in contravention of section 13AA(2) above.
- (10) Kerosene falls within this subsection if—
- (a) it has been supplied in circumstances in which there is reason to believe that it will be put to a particular use; and
  - (b) that use is one which, if payment is not made under subsection (3) of section 13AA above, will contravene subsection (2) of that section.”
- (5) In section 24 (control of use of duty-free and rebated oil)—
- (a) in subsection (1), after “section 13A” there shall be inserted “ section 13AA ”; and
  - (b) in subsection (2), after “section 12” there shall be inserted “ or section 13AA ”.
- (6) This section shall have effect in relation to cases where kerosene is—
- (a) used as fuel, or
  - (b) taken into a fuel supply,
- on or after such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

#### Marginal Citations

M4 1979 c. 5.

M5 1994 c. 9.

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**M6** 1994 c. 9.

## 6 **Mixing of rebated oil.**

- (1) The <sup>M7</sup>Hydrocarbon Oil Duties Act 1979 shall be amended as mentioned in subsections (2) to (4) below.
- (2) In section 20 (contaminated or accidentally mixed oil), after subsection (3) there shall be inserted the following subsection—
  - “(4) The power to make a payment to a person under subsection (2) above in relation to oils that have become accidentally mixed does not apply in relation to a mixture in respect of which he is liable to pay duty under section 20AAA below.”
- (3) After section 20A there shall be inserted the following sections—

### “20AAA Mixing of rebated oil.

- (1) Where—
  - (a) a mixture which is leaded or unleaded petrol is produced in contravention of Part I of Schedule 2A to this Act, and
  - (b) the mixture is not produced as a result of approved mixing,
 a duty of excise shall be charged on the mixture.
- (2) Where—
  - (a) a mixture of heavy oils is produced in contravention of Part II of Schedule 2A to this Act,
  - (b) the mixture is not produced as a result of approved mixing, and
  - (c) the mixture is supplied for use as fuel for a road vehicle or an excepted vehicle,
 a duty of excise shall be charged on the mixture.
- (3) The person liable to pay the duty charged under subsection (1) above is the person producing the mixture.
- (4) The person liable to pay the duty charged under subsection (2) above is the person supplying the mixture.
- (5) The Commissioners may exempt a person from liability to pay duty charged under this section in respect of the production or supply of a mixture if they are satisfied—
  - (a) that the mixture has been produced or (as the case may be) supplied accidentally; and
  - (b) that, having regard to all the circumstances, the person should be exempted from liability to pay the duty.
- (6) Part III of Schedule 2A to this Act makes provision with respect to rates and amounts of duty charged under this section.
- (7) In this section—
  - “approved mixing” has the meaning given by section 20A(5) above; and

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“excepted vehicle” means a vehicle which is an excepted vehicle under any provision of Schedule 1 to this Act.

### **20AAB Mixing of rebated oil: supplementary.**

- (1) A person who—
  - (a) produces a mixture on which duty is charged under section 20AAA(1) above, or
  - (b) supplies a mixture on which duty is charged under section 20AAA(2) above,must notify the Commissioners that he has done so within the period of seven days beginning with the date on which he produced or (as the case may be) supplied the mixture.
- (2) A person is not required to give a notification under subsection (1) above if, before he produced or (as the case may be) supplied the mixture, he notified the Commissioners that he proposed to do so.
- (3) Notification under subsection (1) or (2) above must be given in such form and in such manner, and must contain such particulars, as the Commissioners may direct.
- (4) Subject to subsection (7) below, where it appears to the Commissioners—
  - (a) that a person has produced or supplied a mixture on which duty is charged under section 20AAA above, and
  - (b) that he is the person liable to pay the duty,they may assess the amount of duty due from him to the best of their judgement and notify that amount to him or his representative.
- (5) An assessment under subsection (4) above shall be treated as if it were an assessment under section 12(1) of the <sup>M8</sup>Finance Act 1994.
- (6) The Commissioners may give a direction that a person who is, or expects to be, liable to pay duty charged under section 20AAA above—
  - (a) shall account for duty charged under that section by reference to such periods (“accounting periods”) as may be determined by or under the direction;
  - (b) shall make, in relation to accounting periods, returns in such form and at such times and containing such particulars as may be so determined;
  - (c) shall pay duty charged under that section at such times and in such manner as may be so determined.
- (7) The power to make an assessment under subsection (4) above does not apply in relation to a person who is for the time being subject to a direction under subsection (6) above.
- (8) Where any person—
  - (a) fails to give a notification which he is required to give under subsection (1) above, or
  - (b) fails to comply with a direction under subsection (6) above,his failure shall attract a penalty under section 9 of the <sup>M9</sup>Finance Act 1994 (civil penalties).”

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- (4) After Schedule 2 there shall be inserted the Schedule set out in Schedule 1 to this Act.
- (5) This section and Schedule 1 to this Act shall have effect in relation to—
- (a) the production on or after the appointed day of a mixture which is leaded or unleaded petrol; and
  - (b) the supply on or after the appointed day of a mixture of heavy oils;
- and “the appointed day” here means such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

#### Subordinate Legislation Made

**P1** S. 6(5) power exercised (28.10.1996) by S.I. 1996/2751, art. 2

#### Marginal Citations

**M7** 1979 c. 5.

**M8** 1994 c. 9.

**M9** 1994 c. 9.

## 7 Marked oil used as fuel for road vehicles.

- (1) After section 24 of the <sup>M10</sup>Hydrocarbon Oil Duties Act 1979 (control of use of duty free and rebated oil) there shall be inserted the following section—

### “24A Penalties for misuse of marked oil.

- (1) Marked oil shall not be used as fuel for a road vehicle.
- (2) For the purposes of this section marked oil is any hydrocarbon oil in which a marker is present which is for the time being designated by regulations made by the Commissioners under subsection (3) below.
- (3) The Commissioners may for the purposes of this section designate any marker which appears to them to be used for the purposes of the law of any place (whether within or outside the United Kingdom) for identifying hydrocarbon oil that is not to be used as fuel for road vehicles, or for road vehicles of a particular description.
- (4) For the purposes of this section marked oil shall be taken to be used as fuel for a road vehicle if, but only if, it is used as fuel for the engine provided for propelling the vehicle or for an engine which draws its fuel from the same supply as that engine.
- (5) Where a person uses any hydrocarbon oil in contravention of subsection (1) above, his use of the oil shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (6) If a person who uses any marked oil in contravention of subsection (1) above does so in the knowledge that the oil he is using is marked oil, he shall be guilty of an offence and liable—
  - (a) on summary conviction, to a penalty of the statutory maximum, or to imprisonment for a term not exceeding 6 months, or to both;



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- (b) on conviction on indictment, to a penalty of any amount, or to a term of imprisonment not exceeding 7 years, or to both.
- (7) Any marked oil which is in a road vehicle as part of the fuel supply for the engine which propels the vehicle shall be liable to forfeiture.
- (8) Where in any proceedings relating to this section a question arises as to the nature of any substance present at any time in any hydrocarbon oil—
  - (a) a certificate of the Commissioners to the effect that that substance is or was a marker designated for the purposes of this section shall be sufficient, unless the contrary is shown, for establishing that fact; and
  - (b) any document purporting to be such a certificate shall be taken to be one unless it is shown not to be.”
- (2) In section 24(1) of that Act (purposes for which regulations may be made), for “or section 19A above” there shall be inserted “, section 19A or section 24A of this Act”.

#### Marginal Citations

M10 1979 c. 5.

VALID FROM 01/11/1996

### 8 Relief for marine voyages.

- (1) The following provisions of the <sup>M11</sup>Hydrocarbon Oil Duties Act 1979 are hereby repealed—
  - (a) section 18 (fuel for ships in home waters), and
  - (b) in subsection (1) of section 19 (fuel used in fishing boats, etc.), paragraph(a) and the words from “by the owner” to “be”.
- (2) This section shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

#### Subordinate Legislation Made

P2 S. 8(2) power fully exercised (4.10.1996): 1.11.1996 appointed by S.I. 1996/2536, art. 2

#### Marginal Citations

M11 1979 c. 5.

### *Tobacco products duty*

### 9 Rates of duty.

- (1) For the Table of rates of duty in Schedule 1 to the <sup>M12</sup>Tobacco Products Duty Act 1979 there shall be substituted—

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“1. Cigarettes	An amount equal to 20 per cent. of the retail price plus £62.52 per thousand cigarettes.
2. Cigars	£91.52 per kilogram.
3. Hand-rolling tobacco	£85.94 per kilogram.
4. Other smoking tobacco and chewing tobacco	£40.24 per kilogram.”

(2) This section shall be deemed to have come into force at 6 o’clock in the evening of 28th November 1995.

#### Marginal Citations

M12 1979 c. 7.

### *Betting duties: rates*

#### 10 General betting duty.

(1) In section 1(2) of the <sup>M13</sup>Betting and Gaming Duties Act 1981 (rate of general betting duty), for “7.75 per cent.” there shall be substituted “ 6.75 per cent. ”

(2) This section shall apply in relation to bets made on or after 1st March 1996.

#### Marginal Citations

M13 1981 c. 63.

#### 11 Pool betting duty.

In section 7(1) of the <sup>M14</sup>Betting and Gaming Duties Act 1981 (rate of pool betting duty), for “32.50 per cent” there shall be substituted—

- (a) in relation to bets the stake money on which has been or is paid on or after 3rd December 1995 and before the first Sunday to follow the day on which this Act is passed, “ 27.50 per cent. ”; and
- (b) in relation to bets the stake money on which is paid on or after that first Sunday, “ 26.50 per cent. ”

#### Marginal Citations

M14 1981 c. 63.

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### *Amusement machine licence duty*

## **12 Licences for machines as well as premises.**

- (1) In subsection (1) of section 21 of the <sup>M15</sup>Betting and Gaming Duties Act 1981 (requirement for amusement machine licence with respect to premises), at the end there shall be inserted “ or the machine ”.
- (2) In subsection (2) of that section (licences to be known as amusement machine licences), at the end there shall be inserted “ and, if it is granted with respect to a machine, rather than with respect to premises, as a special amusement machine licence.”
- (3) After subsection (3) of that section there shall be inserted the following subsections—
  - “(3AA) A special amusement machine licence shall not be granted except where—
    - (a) the machine with respect to which it is granted is of a description of machine for which special amusement machine licences are available;
    - (b) such conditions as may be prescribed by regulations made by the Commissioners are satisfied in relation to the application for the licence, the machine and the person by whom the application is made; and
    - (c) the licence is for twelve months.
  - (3AB) Special amusement machine licences shall be available for amusement machines of each of the following descriptions—
    - (a) machines that are not gaming machines; and
    - (b) small prize machines.”
- (4) In section 24(4) of that Act (provision of unlicensed machines), at the end there shall be inserted “ or the machines ”.
- (5) In paragraph 4 of Schedule 4 to that Act (seasonal licences), after sub-paragraph (7) there shall be inserted the following sub-paragraph—
  - “(7AA) Sub-paragraphs (4) and (5) above shall have effect where—
    - (a) an amusement machine is provided on any premises at any time in a winter period, and
    - (b) the provision of that machine on those premises at that time is authorised by a special amusement machine licence,as if an amusement machine licence had been granted in respect of those premises for that winter period.”
- (6) Paragraph 5 of that Schedule shall become sub-paragraph (1) of that paragraph, and after that sub-paragraph there shall be inserted the following sub-paragraphs—
  - “(2) Regulations may provide for this Schedule to have effect in relation to special amusement machine licences with such exceptions, adaptations and modifications as may be prescribed.
  - (3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, regulations may include provision requiring—
    - (a) a special amusement machine licence to be displayed on such premises and in such manner, and

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- (b) the machine to which such a licence relates to bear such labels and marks,  
as may be determined by directions given, in accordance with the regulations, by the Commissioners.”

**Marginal Citations**

M15 1981 c. 63.

*Air passenger duty*

**13 Pleasure flights.**

- (1) In section 31 of the <sup>M16</sup>Finance Act 1994 (air passenger duty: exceptions for certain passengers) after subsection (4) there shall be inserted—

“(4A) A passenger is not a chargeable passenger in relation to a flight if under his agreement for carriage (whether or not it is evidenced by a ticket)—

- (a) the flight is to depart from and return to the same airport, and  
(b) the duration of the flight (excluding any period during which the aircraft’s doors are open for boarding or disembarkation) is not to exceed 60 minutes.”

- (2) In section 32 of that Act (change of circumstances after ticket issued etc.)—

- (a) in subsection (1) (which provides that that section applies where a person’s agreement for carriage is evidenced by a ticket) for the words “This section applies” there shall be substituted the words “ Subsections (2) and (3) below apply ”;  
(b) after subsection (3) there shall be added—

“(4) Where—

- (a) at the time a passenger’s flight begins, by virtue of section 31(4A) above he would not (assuming there is no change of circumstances) be a chargeable passenger in relation to the flight, and  
(b) by reason only of a change of circumstances not attributable to any act or default of his, the flight does not return to the airport from which it departed or exceeds 60 minutes in duration (excluding any period during which the aircraft’s doors are open for boarding or disembarkation),

he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.”

**Marginal Citations**

M16 1994 c. 9.

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### Vehicle excise duty

#### 14 Increase in general rate.

- (1) In Schedule 1 to the <sup>M17</sup>Vehicle Excise and Registration Act 1994 (annual rates of duty), in paragraph 1(2) (the general rate), for “£135” there shall be substituted “ £140 ”.
- (2) Subsection (1) above applies in relation to licences taken out after 28th November 1995.

#### Marginal Citations

M17 1994 c. 22.

#### 15 Electrically propelled vehicles.

- (1) In Schedule 1 to the Vehicle Excise and Registration Act 1994 (annual rates of duty), in paragraph 2(1)(a) (rate for motorcycles with low cylinder capacity), after “150 cubic centimetres” there shall be inserted “ or the motorcycle is an electrically propelled vehicle ”.
- (2) In paragraph 4F of that Schedule (electrically propelled vehicles are special concessionary vehicles)—
  - (a) in sub-paragraph (1), after “electrically propelled vehicle” there shall be inserted “ other than a motorcycle (within the meaning of Part II of this Schedule) ”; and
  - (b) sub-paragraph (2) shall be omitted.
- (3) In section 62 of that Act (definitions), after subsection (1) there shall be inserted the following subsection—

“(1A) For the purposes of this Act, a vehicle is not an electrically propelled vehicle unless the electrical motive power is derived from—

  - (a) a source external to the vehicle, or
  - (b) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.”
- (4) Subsections (1) to (3) above apply in relation to licences taken out after 28th November 1995.
- (5) In Schedule 2 to that Act (exemptions), after paragraph 2 there shall be inserted the following paragraph—

#### Electrically assisted pedal cycles

- “2A (1) An electrically assisted pedal cycle is an exempt vehicle.
- (2) For the purposes of sub-paragraph (1) an electrically assisted pedal cycle is a vehicle of a class complying with such requirements as may be prescribed by regulations made by the Secretary of State for the purposes of this paragraph.”

*Status: Point in time view as at 29/04/1996. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Finance Act 1996 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 16 Steam powered vehicles etc.

- (1) In Schedule 1 to the Vehicle Excise and Registration Act 1994 (annual rates of duty), after paragraph 4E there shall be inserted the following paragraph—

“4EE A steam powered vehicle is a special concessionary vehicle.”

- (2) In paragraph 3 of that Schedule (buses), in sub-paragraph (2)(b) (vehicles which are not buses), after “excepted vehicle” there shall be inserted “ or a special concessionary vehicle ”.

- (3) In paragraph 4(2) of that Schedule (meaning of “special vehicle”), for “and is” there shall be substituted “ which is not a special concessionary vehicle and which is ”.

- (4) In paragraph 5 of that Schedule (recovery vehicles), after sub-paragraph (5) there shall be inserted the following sub-paragraph—

“(5A) A vehicle is not a recovery vehicle if it is a special concessionary vehicle.”

- (5) In paragraph 6(1) of that Schedule (vehicles used for exceptional loads), after paragraph (b) there shall be inserted—

“and which is not a special concessionary vehicle.”

- (6) In paragraph 7(2) of that Schedule (meaning of “haulage vehicle”), after “Part IV,” there shall be inserted “ IVA, ”.

- (7) In paragraph 16 of that Schedule (application of Part VIII of the Schedule), in sub-paragraph (1)(a), after “Part II, IV,” there shall be inserted “ IVA, ”.

- (8) This section applies in relation to licences taken out after 28th November 1995.

## 17 Vehicles capable of conveying loads.

- (1) Schedule 1 to the <sup>M18</sup>Vehicle Excise and Registration Act 1994 (annual rates of duty) shall be amended in accordance with subsections (2) to (8) below.

- (2) In paragraph 4(2) (meaning of “special vehicle”), immediately before paragraph (c) there shall be inserted the following paragraph—

“(bb) a vehicle falling within sub-paragraph (2A) or (2B),”.

- (3) After sub-paragraph (2) of paragraph 4 there shall be inserted the following sub-paragraphs—

“(2A) A vehicle falls within this sub-paragraph if—

- (a) it is designed or adapted for use for the conveyance of goods or burden of any description; but
- (b) it is not so used or is not so used for hire or reward or for or in connection with a trade or business.

(2B) A vehicle falls within this sub-paragraph if—

- (a) it is designed or adapted for use with a semi-trailer attached; but
- (b) it is not so used or, if it is so used, the semi-trailer is not used for the conveyance of goods or burden of any description.”

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- (4) In paragraph 9(2) (rigid goods vehicles which are subject to basic goods vehicle rate), after paragraph (b) there shall be inserted “and
- (c) to any rigid goods vehicle which is used loaded only in connection with a person learning to drive the vehicle or taking a driving test.”
- (5) In paragraph 10(1) (trailer supplement), after “exceeding 12,000 kilograms” there shall be inserted “, which does not fall within paragraph 9(2)(b) or (c) ”.
- (6) In paragraph 11(2) (tractive units which are subject to basic goods vehicle rate), after paragraph (b) there shall be inserted “and
- (c) to any tractive unit to which a semi-trailer is attached which is used loaded only in connection with a person learning to drive the tractive unit or taking a driving test.”
- (7) In paragraph 16(1) (cases where Part VIII of Schedule 1 does not apply), paragraph (b), and the word “or” immediately preceding it, shall be omitted.
- (8) After paragraph 18 there shall be inserted the following paragraph—

“19 **Other expressions**

- (1) In this Part “driving test” means any test of competence to drive mentioned in section 89(1) of the <sup>M19</sup>Road Traffic Act 1988.
- (2) For the purposes of this Part a vehicle or a semi-trailer is used loaded if the vehicle or, as the case may be, the semi-trailer is used for the conveyance of goods or burden of any description.”
- (9) In section 7 of the <sup>M20</sup>Vehicle Excise and Registration Act 1994 (issue of licences), in subsection (2) (declarations and particulars in relation to goods vehicles)—
- (a) after “goods vehicle” there shall be inserted “ or a special vehicle ”; and
- (b) after “goods vehicles” there shall be inserted “ or, as the case may be, special vehicles ”.
- (10) After subsection (7) of that section there shall be inserted the following subsection—
- “(8) In this section “special vehicle” has the same meaning as in paragraph 4 of Schedule 1.”
- (11) Subject to subsection (13) below, subsections (1) to (8) above apply in relation to licences taken out after 28th November 1995.
- (12) Subsection (13) below applies where a vehicle licence is taken out—
- (a) on or before 28th November 1995, and
- (b) at the rate applicable (at the time it is taken out) under Schedule 1 to the Vehicle Excise and Registration Act 1994.
- (13) While the licence is in force duty shall not, by virtue of this section, become chargeable under section 15 of that Act (vehicle used in manner attracting higher rate).
- (14) Subsections (9) and (10) above apply in relation to applications made after 28th November 1995.
- (15) Paragraph 15 of Schedule 1 to that Act (which is unnecessary) shall be omitted.

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#### Marginal Citations

M18 1994 c. 22.

M19 1988 c. 52.

M20 1994 c. 22.

## 18 Old vehicles.

- (1) In Schedule 2 to the <sup>M21</sup>Vehicle Excise and Registration Act 1994 (exempt vehicles), immediately before paragraph 2 there shall be inserted the following paragraph—

#### Old vehicles

“1A (1) A vehicle of a description mentioned in sub-paragraph (2) is an exempt vehicle at any time if it was constructed more than 25 years before the beginning of the year in which that time falls.

(2) The descriptions of vehicles are—

- (a) a vehicle in respect of which no annual rate is specified by any provision of Parts II to VIII of Schedule 1;
- (b) a motorcycle which does not exceed 450 kilograms in weight unladen.

(3) In sub-paragraph (2)(b) “motorcycle” has the same meaning as in Part II of Schedule 1.”

- (2) In Schedule 1 to that Act (annual rates of duty), in paragraph 1 (rate for vehicle for which no other rate is specified)—

- (a) for paragraphs (a) and (b) of sub-paragraph (1) there shall be substituted “ the general rate ”; and
- (b) sub-paragraphs (3) to (5) shall be omitted;

and, in paragraph 2 (motorcycles), sub-paragraph (2) shall be omitted.

- (3) In section 2(4) of that Act (rate of duty for vehicle not currently in use and for which no previous licence issued), for the words from “whichever” to the end there shall be substituted “ the general rate currently specified in paragraph 1(2) of Schedule 1 ”.

(4) In that Act—

- (a) in section 13 (trade licences), in subsection (3)(b),
- (b) in section 13 as substituted under paragraph 8 of Schedule 4, in subsection (4)(b), and
- (c) in section 36(3)(b) (additional liability where cheque dishonoured), for “1(1)(a)” there shall be substituted “ 1 ”.

- (5) This section has effect in relation to times after 28th November 1995.

#### Marginal Citations

M21 1994 c. 22.



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## 19 Old vehicles: further provisions.

- (1) In Schedule 2 to the <sup>M22</sup>Vehicle Excise and Registration Act 1994 (exempt vehicles), for paragraph 1A (inserted by section 18 above) there shall be substituted the following paragraph—

### Old vehicles

- “1A (1) Subject to sub-paragraph (2), a vehicle is an exempt vehicle at any time if it was constructed more than 25 years before the beginning of the year in which that time falls.
- (2) A vehicle is not an exempt vehicle by virtue of sub-paragraph (1) if—
- (a) an annual rate is specified in respect of it by any provision of Part III, V, VI, VII or VIII of Schedule 1; or
  - (b) it is a special vehicle, within the meaning of Part IV of Schedule 1, which—
    - (i) falls within sub-paragraph (3) or (4); and
    - (ii) is not a digging machine, mobile crane, works truck or road roller.
- (3) A vehicle falls within this sub-paragraph if—
- (a) it is designed or adapted for use for the conveyance of goods or burden of any description;
  - (b) it is put to a commercial use on a public road; and
  - (c) that use is not a use for the conveyance of goods or burden of any description.
- (4) A vehicle falls within this sub-paragraph if—
- (a) it is designed or adapted for use with a semi-trailer attached;
  - (b) it is put to a commercial use on a public road; and
  - (c) in a case where that use is a use with a semi-trailer attached, the semi-trailer is not used for the conveyance of goods or burden of any description.
- (5) In sub-paragraph (2) “digging machine”, “mobile crane” and “works truck” have the same meanings as in paragraph 4 of Schedule 1.
- (6) In sub-paragraphs (3) and (4) “commercial use” means use for hire or reward or for or in connection with a trade or business.”

- (2) This section has effect in relation to times on or after 1st June 1996.

### Marginal Citations

M22 1994 c. 22.

## 20 Exemptions for vehicle testing: general.

- (1) Paragraph 22 of Schedule 2 to the <sup>M23</sup>Vehicle Excise and Registration Act 1994 (exemption for vehicle testing) shall be amended as follows.

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- (2) In sub-paragraph (1) (use for the purposes of submitting a vehicle to, or bringing it away from, a compulsory test), after the words “compulsory test”, in each place where they occur, there shall be inserted “ or a vehicle weight test ”.
- (3) After sub-paragraph (1) there shall be inserted the following sub-paragraph—
- “(1A) A vehicle is an exempt vehicle when it is being used solely for the purpose of—
- (a) taking it (by previous arrangement for a specified time on a specified date) for a relevant re-examination, or
  - (b) bringing it away from such a re-examination.”
- (4) In sub-paragraph (2) (use by an authorised person in the course of compulsory test)—
- (a) after “compulsory test” there shall be inserted “ , a vehicle weight test or a relevant re-examination and is being so used ”; and
  - (b) in paragraphs (a) and (b), after the words “the test”, in each place where they occur, there shall be inserted “ or re-examination ”.
- (5) After sub-paragraph (2) there shall be inserted the following sub-paragraph—
- “(2A) A vehicle is an exempt vehicle when it is being used by an authorised person solely for the purpose of warming up its engine in preparation for the carrying out of—
- (a) a compulsory test, or
  - (b) a relevant re-examination that is to be carried out for the purposes of an appeal relating to a determination made on a compulsory test.”
- (6) In sub-paragraph (3) (exemption applying where the relevant certificate is refused), after “a vehicle” there shall be inserted “ or as a result of a relevant re-examination, ”.
- (7) In sub-paragraph (5) (relevant examinations)—
- (a) for paragraph (a), there shall be substituted the following paragraph—
    - “(a) an examination under regulations under section 49(1)(b) or (c) of the <sup>M24</sup>Road Traffic Act 1988 (examination as to compliance with construction and use or safety requirements)”;
  - (b) the word “ and ” shall be inserted at the end of paragraph (b); and
  - (c) paragraph (c) (examinations for the purpose of an appeal under section 60 of the Road Traffic Act 1988) shall be omitted.
- (8) After sub-paragraph (6) there shall be inserted the following sub-paragraphs—
- “(6A) In this paragraph “a vehicle weight test” means any examination of a vehicle for which provision is made by regulations under—
- (a) section 61A of this Act,
  - (b) section 49(1)(a) of the Road Traffic Act 1988 (tests for selecting plated weights and other plated particulars), or
  - (c) Article 65(1)(a) of the <sup>M25</sup>Road Traffic (Northern Ireland) Order 1995.
- (6B) In this paragraph “a relevant re-examination” means any examination or re-examination which is carried out in accordance with any provision or requirement made or imposed for the purposes of an appeal relating to a determination made on a compulsory test or vehicle weight test.”

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(9) Subject to section 21(3) below, in sub-paragraph (7) (meaning of “authorised person”)

- (a) the word “and” at the end of paragraph (b) shall be omitted;
- (b) at the end of paragraph (c) there shall be inserted the word “ and ”; and
- (c) after that paragraph there shall be inserted the following paragraph—
  - “(d) in the case of a relevant re-examination—
    - (i) the person to whom the appeal in question is made, or
    - (ii) any person who, by virtue of an appointment made by that person, is authorised by or under any enactment to carry out that re-examination.”

(10) This section shall be deemed to have come into force on 28th November 1995.

#### Marginal Citations

**M23** 1994 c. 22.

**M24** 1988 c. 52.

**M25** S.I. 1995/2994 (N.I. 18).

PROSPECTIVE

## 21 Exemptions for vehicle testing in Northern Ireland.

(1) Paragraph 22 of Schedule 2 to the <sup>M26</sup>Vehicle Excise and Registration Act 1994 (exemption for vehicle testing) shall be further amended as follows.

(2) For sub-paragraph (6) (meaning of “compulsory test” in Northern Ireland) there shall be substituted the following sub-paragraph—

“(6) In this paragraph “compulsory test” means, as respects Northern Ireland—

- (a) an examination to obtain a test certificate under Article 61 of the <sup>M27</sup>Road Traffic (Northern Ireland) Order 1995 without which a vehicle licence cannot be obtained for the vehicle,
- (b) an examination to obtain a goods vehicle test certificate under Article 65 of that Order, or
- (c) an examination to obtain a public service vehicle licence under Article 60(1) of the <sup>M28</sup>Road Traffic (Northern Ireland) Order 1981.”

(3) For paragraph (c) of sub-paragraph (7) (as amended by section 20(9) above) there shall be substituted the following paragraph—

“(c) in the case of an examination within sub-paragraph (6), an authorised examiner within the meaning of Article 61(3)(a) of the Road Traffic (Northern Ireland) Order 1995 or a vehicle examiner within the meaning of Part III of that Order; and”.

(4) In sub-paragraph (9) (meaning of “relevant certificate” in Northern Ireland), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

“(a) a test certificate (within the meaning of Article 61(2) of the Road Traffic (Northern Ireland) Order 1995),

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- (b) a goods vehicle test certificate (within the meaning of Article 65(2) of that Order), or”.
- (5) In sub-paragraph (10)(a) (meaning of “relevant work”), the words “(or, in Northern Ireland, a vehicle test certificate)” shall be omitted.
- (6) This section shall be deemed to have come into force on the date of the coming into operation of Articles 61 and 65 of the Road Traffic (Northern Ireland) Order 1995 (“the operational date”).
- (7) Subsections (2), (4) and (5) above do not have effect in relation to a compulsory test carried out in Northern Ireland before the operational date except for the purpose of construing, in relation to such a test, the reference to a further compulsory test in paragraph 22(10)(a) of Schedule 2 to the Vehicle Excise and Registration Act 1994.

#### Commencement Information

**I2** S. 21 comes into force in accordance with s. 21(6).

#### Marginal Citations

**M26** 1994 c. 22.

**M27** S.I. 1995/2994 (N.I. 18).

**M28** S.I. 1981/154 (N.I. 1).

## 22 Other provisions relating to Northern Ireland.

- (1) In section 42 of the Vehicle Excise and Registration Act 1994 (not fixing registration mark), in subsection (5)(b), for “Article 34 of the Road Traffic (Northern Ireland) Order 1981” there shall be substituted “ Article 63 of the Road Traffic (Northern Ireland) Order 1995 ”.
- (2) In subsection (6) of that section, for paragraph (b) there shall be substituted—
- “(b) it is being driven for the purposes of, or in connection with, its examination under Article 61 of the <sup>M29</sup>Road Traffic (Northern Ireland) Order 1995 in circumstances in which its use is exempted from paragraph (1) of Article 63 of that Order by regulations under paragraph (6) of that Article.”
- (3) In section 60A(11) of that Act (special maximum weight in Northern Ireland), for “Article 29(3) of the <sup>M30</sup>Road Traffic (Northern Ireland) Order 1981” there shall be substituted “ Article 60(1) of the Road Traffic (Northern Ireland) Order 1995 ”.
- (4) In section 61(6) of that Act (meaning of “weight unladen”), for paragraph (b) there shall be substituted—
- “(b) in Northern Ireland, has the same meaning as it has for the purposes of the Road Traffic (Northern Ireland) Order 1995 by virtue of Article 7 of that Order.”
- (5) In paragraph 6 of Schedule 1 to that Act (vehicles used for exceptional loads), in sub-paragraph (2) for paragraph (b) there shall be substituted—
- “(b) Article 60 of the Road Traffic (Northern Ireland) Order 1995,”.
- (6) In that paragraph—

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- (a) in sub-paragraph (3)(a), for “Article 28 of the Road Traffic (Northern Ireland) Order 1981” there shall be substituted “ Article 55 of the Road Traffic (Northern Ireland) Order 1995 ”; and
  - (b) in sub-paragraph (4), for “the Road Traffic (Northern Ireland) Order 1981” there shall be substituted “ the Road Traffic (Northern Ireland) Order 1995 ”.
- (7) In paragraph 17 of Schedule 3 to that Act (amendments of the Road Traffic (Northern Ireland) Order 1981)—
- (a) in sub-paragraph (1), “29(2),” and “34(6),” shall be omitted, and
  - (b) sub-paragraph (2) shall be omitted.

#### Marginal Citations

**M29** S.I. 1995/2994 (N.I. 18).

**M30** S.I. 1981/154 (N.I. 1).

## 23 Licensing and registration.

Schedule 2 to this Act (which makes provision in connection with powers conferred on the Secretary of State by the <sup>M31</sup>Vehicle Excise and Registration Act 1994) shall have effect.

#### Marginal Citations

**M31** 1994 c. 22.

### *Repeal of certain drawbacks and allowances*

## 24 Repeal of certain drawbacks and allowances.

The following provisions (which provide for repayments, drawbacks or allowances in the case of certain excise duties) shall cease to have effect, that is to say—

- (a) section 3 of the <sup>M32</sup>Finance Act 1977 (repayment in respect of tobacco used in the manufacture of a tobacco product after having borne duty under section 4 of the <sup>M33</sup>Finance Act 1964);
- (b) section 22(6) of the <sup>M34</sup>Alcoholic Liquor Duties Act 1979 (additions in respect of waste which are deemed to be made to tinctures exported or shipped as stores);
- (c) section 23 of that Act of 1979 (allowances in respect of British compounded spirits);
- (d) section 92(6) of that Act of 1979 (transitional right to drawback); and
- (e) section 9(2) and (3) of the <sup>M35</sup>Isle of Man Act 1979 (removal to the Isle of Man treated as export for the purposes of drawback).

#### Marginal Citations

**M32** 1977 c. 36.

**M33** 1964 c. 49.

**M34** 1979 c. 4.

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M35 1979 c. 58.

## PART II

### VALUE ADDED TAX

#### *EC Second VAT Simplification Directive*

#### 25 EC Second VAT Simplification Directive.

Sections 26 to 29 of and Schedule 3 to this Act are for the purpose of giving effect to requirements of the directive of the Council of the European Communities dated 17th May 1977 No. [77/388/EEC](#) and the amendments of that directive by the directive of that Council dated 10th April 1995 No. [95/7/EC](#) (amendments with a view to introducing new simplification measures with regard to value added tax).

#### 26 Fiscal and other warehousing.

- (1) The provisions of Schedule 3 to this Act shall have effect.
- (2) Subject to subsection (3) below, this section and Schedule 3 to this Act shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint, and shall apply to any acquisition of goods from another member State and any supply taking place on or after that day.
- (3) In so far as the provisions inserted by Schedule 3 to this Act confer power to make regulations they shall come into force on the day this Act is passed.

#### Subordinate Legislation Made

**P3** [S. 26\(2\)](#) power fully exercised (9.5.1996): 1.6.1996 appointed by [S.I. 1996/1249, art. 2](#)

#### Commencement Information

**I3** [S. 26](#) wholly in force at 1.6.1996; [s. 26](#) partly in force at Royal Assent see [s. 26\(3\)](#); [s. 26](#) in force at 1.6.1996 in so far as not already in force by [S.I 1996/1249, art. 2](#)

#### 27 Value of imported goods.

- (1) Section 21 of the <sup>M36</sup> Value Added Tax Act 1994 (value of imported goods) shall be amended as follows.
- (2) In subsection (2) of that section at the end of paragraph (a) the word “and” shall be omitted.
- (3) For paragraph (b) of that subsection there shall be substituted—
  - “(b) all incidental expenses, such as commission, packing, transport and insurance costs, up to the goods’ first destination in the United Kingdom; and
  - (c) if at the time of the importation of the goods from a place outside the member States a further destination for the goods is known, and that

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destination is within the United Kingdom or another member State, all such incidental expenses in so far as they result from the transport of the goods to that other destination;

and in this subsection “the goods’ first destination” means the place mentioned on the consignment note or any other document by means of which the goods are imported into the United Kingdom, or in the absence of such documentation it means the place of the first transfer of cargo in the United Kingdom. ”

- (4) This section shall have effect in relation to goods imported on or after 1st January 1996.

**Marginal Citations**

M36 1994 c. 23.

**28 Adaptation of aircraft and hovercraft.**

- (1) Section 22 of the <sup>M37</sup>Value Added Tax Act 1994 shall be omitted.  
(2) This section shall apply to supplies made on or after 1st January 1996.

**Marginal Citations**

M37 1994 c. 23.

**29 Work on materials.**

- (1) The Value Added Tax Act 1994 shall be amended as follows.  
(2) After subsection (2) of section 30 there shall be inserted the following subsection—  
“(2A) A supply by a person of services which consist of applying a treatment or process to another person’s goods is zero-rated by virtue of this subsection if by doing so he produces goods, and either—  
(a) those goods are of a description for the time being specified in Schedule 8; or  
(b) a supply by him of those goods to the person to whom he supplies the services would be of a description so specified.”  
(3) In subsection (5) of section 55 (supplies of gold), after paragraph (b) there shall be inserted the following—  
“; or  
(c) any supply of services consisting in the application to another person’s goods of a treatment or process which produces goods a supply of which would fall within paragraph (a) above.”;  
and the word “or” at the end of paragraph (a) shall be omitted.  
(4) Paragraph 2 of Schedule 4 (which provides that the treatment or processing of another person’s goods shall in certain circumstances be a supply of goods) shall be omitted.

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(5) This section shall apply to supplies made on or after 1st January 1996.

*Other provisions relating to charges to VAT*

**30 Refunds in connection with construction and conversion.**

(1) For subsection (1) of section 35 of the Value Added Tax Act 1994 (refund of VAT to persons constructing certain buildings) there shall be substituted the following subsections—

“(1) Where—

- (a) a person carries out works to which this section applies,
- (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
- (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works,

the Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.

(1A) The works to which this section applies are—

- (a) the construction of a building designed as a dwelling or number of dwellings;
- (b) the construction of a building for use solely for a relevant residential purpose or relevant charitable purpose; and
- (c) a residential conversion.

(1B) For the purposes of this section goods shall be treated as used for the purposes of works to which this section applies by the person carrying out the works in so far only as they are building materials which, in the course of the works, are incorporated in the building in question or its site.

(1C) Where—

- (a) a person (“the relevant person”) carries out a residential conversion by arranging for any of the work of the conversion to be done by another (“a contractor”),
- (b) the relevant person’s carrying out of the conversion is lawful and otherwise than in the course or furtherance of any business,
- (c) the contractor is not acting as an architect, surveyor or consultant or in a supervisory capacity, and
- (d) VAT is chargeable on services consisting in the work done by the contractor,

the Commissioners shall, on a claim made in that behalf, refund to the relevant person the amount of VAT so chargeable.

(1D) For the purposes of this section works constitute a residential conversion to the extent that they consist in the conversion of a non-residential building, or a non-residential part of a building, into—

- (a) a building designed as a dwelling or a number of dwellings;
- (b) a building intended for use solely for a relevant residential purpose; or



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- (c) anything which would fall within paragraph (a) or (b) above if different parts of a building were treated as separate buildings.”
- (2) In subsection (2) of that section (method of making claim), after “may by regulations prescribe” there shall be inserted “ or, in the case of documents, as the Commissioners may determine in accordance with the regulations ”.
- (3) After subsection (3) of that section there shall be inserted the following subsections—
  - “(4) The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group.
  - (5) The power of the Treasury by order under section 30 to vary Schedule 8 shall include—
    - (a) power to apply any variation made by the order for the purposes of this section; and
    - (b) power to make such consequential modifications of this section as they may think fit.”
- (4) This section applies in relation to any case in which a claim for repayment under section 35 of the <sup>M38</sup>Value Added Tax Act 1994 is made at any time on or after the day on which this Act is passed.

#### Marginal Citations

M38 1994 c. 23.

### 31 Groups: anti-avoidance.

- (1) In section 43 of the <sup>M39</sup>Value Added Tax Act 1994 (groups of companies), after subsection (8) there shall be inserted the following subsection—
  - “(9) Schedule 9A (which makes provision for ensuring that this section is not used for tax avoidance) shall have effect.”
- (2) After Schedule 9 to that Act there shall be inserted the Schedule set out in Schedule 4 to this Act.
- (3) In section 83 of that Act (appeals), after paragraph (w) there shall be inserted the following paragraph—
  - “(wa) any direction or assessment under Schedule 9A;”.
- (4) In section 84 of that Act (further provisions relating to appeals), after subsection (7) there shall be inserted the following subsection—
  - “(7A) Where there is an appeal against a decision to make such a direction as is mentioned in section 83(wa), the cases in which the tribunal shall allow the appeal shall include (in addition to the case where the conditions for the making of the direction were not fulfilled) the case where the tribunal are satisfied, in relation to the relevant event by reference to which the direction was given, that—
    - (a) the change in the treatment of the body corporate, or
    - (b) the transaction in question,

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had as its main purpose or, as the case may be, as each of its main purposes a genuine commercial purpose unconnected with the fulfilment of the condition specified in paragraph 1(3) of Schedule 9A.”

- (5) Subsection (1A) of section 43 of that Act shall not have effect in relation to supplies on or after the day on which this Act is passed.

#### Marginal Citations

M39 1994 c. 23.

### 32 Supplies of gold etc.

- (1) In section 55 of the Value Added Tax Act 1994 (supplies of gold), for paragraph (a) of subsection (5) there shall be substituted the following paragraph—
- “(a) any supply of goods consisting in fine gold, in gold grain of any purity or in gold coins of any purity; or”.
- (2) This section applies in relation to any supply after 28th November 1995.

### 33 Small gifts.

- (1) In Schedule 4 to the <sup>M40</sup>Value Added Tax Act 1994 (matters to be treated as supply of goods or services), in paragraph 5(2)(a) (gift of goods in the course or furtherance of a business not a supply if cost to donor is not more than £10), for “£10” there shall be substituted “£15”.
- (2) At the end of paragraph 5 of Schedule 4 to that Act there shall be inserted the following sub-paragraph—
- “(7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (2)(a) above such sum, not being less than £10, as they think fit.”
- (3) In section 97(4) of that Act (orders which are subject to affirmative procedure), after paragraph (a) there shall be inserted the following paragraph—
- “(ab) an order under paragraph 5(7) of Schedule 4 substituting a lesser sum for the sum for the time being specified in paragraph 5(2)(a) of that Schedule;”.
- (4) Subsection (1) above shall apply where a gift is made after 28th November 1995.

#### Marginal Citations

M40 1994 c. 23.

### *Payment and enforcement*

### 34 Method of making payments on account.

In section 28 of the <sup>M41</sup>Value Added Tax Act 1994 (payments on account of VAT), after subsection (2) there shall be inserted the following subsection—

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“(2A) The Commissioners may give directions, to persons who are or may become liable by virtue of any order under this section to make payments on account of VAT, about the manner in which they are to make such payments; and where such a direction has been given to any person and has not subsequently been withdrawn, any duty of that person by virtue of such an order to make such a payment shall have effect as if it included a requirement for the payment to be made in the manner directed.”

#### Marginal Citations

M41 1994 c. 23.

### 35 Default surcharges.

- (1) The Value Added Tax Act 1994 shall be amended as follows.
- (2) After section 59 (default surcharge) there shall be inserted the following section—

#### “59A Default surcharge: payments on account.

- (1) For the purposes of this section a taxable person shall be regarded as in default in respect of any prescribed accounting period if the period is one in respect of which he is required, by virtue of an order under section 28, to make any payment on account of VAT and either—
  - (a) a payment which he is so required to make in respect of that period has not been received in full by the Commissioners by the day on which it became due; or
  - (b) he would, but for section 59(1A), be in default in respect of that period for the purposes of section 59.
- (2) Subject to subsections (10) and (11) below, subsection (4) below applies in any case where—
  - (a) a taxable person is in default in respect of a prescribed accounting period; and
  - (b) the Commissioners serve notice on the taxable person (a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period which—
    - (i) begins, subject to subsection (3) below, on the date of the notice; and
    - (ii) ends on the first anniversary of the last day of the period referred to in paragraph (a) above.
- (3) If—
  - (a) a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period, and
  - (b) that period ends at or before the expiry of an existing surcharge period already notified to the taxable person concerned,the surcharge period specified in that notice shall be expressed as a continuation of the existing surcharge period; and, accordingly, the existing period and its extension shall be regarded as a single surcharge period.

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- (4) Subject to subsections (7) to (11) below, if—
- (a) a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period,
  - (b) that prescribed accounting period is one ending within the surcharge period specified in (or extended by) that notice, and
  - (c) the aggregate value of his defaults in respect of that prescribed accounting period is more than nil,
- that person shall be liable to a surcharge equal to whichever is the greater of £30 and the specified percentage of the aggregate value of his defaults in respect of that prescribed accounting period.
- (5) Subject to subsections (7) to (11) below, the specified percentage referred to in subsection (4) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods during the surcharge period which are periods in respect of which the taxable person is in default and in respect of which the value of his defaults is more than nil, so that—
- (a) in relation to the first such prescribed accounting period, the specified percentage is 2 per cent.;
  - (b) in relation to the second such period, the specified percentage is 5 per cent.;
  - (c) in relation to the third such period, the specified percentage is 10 per cent.; and
  - (d) in relation to each such period after the third, the specified percentage is 15 per cent.
- (6) For the purposes of this section the aggregate value of a person's defaults in respect of a prescribed accounting period shall be calculated as follows—
- (a) where the whole or any part of a payment in respect of that period on account of VAT was not received by the Commissioners by the day on which it became due, an amount equal to that payment or, as the case may be, to that part of it shall be taken to be the value of the default relating to that payment;
  - (b) if there is more than one default with a value given by paragraph (a) above, those values shall be aggregated;
  - (c) the total given by paragraph (b) above, or (where there is only one default) the value of the default under paragraph (a) above, shall be taken to be the value for that period of that person's defaults on payments on account;
  - (d) the value of any default by that person which is a default falling within subsection (1)(b) above shall be taken to be equal to the amount of any outstanding VAT less the amount of unpaid payments on account; and
  - (e) the aggregate value of a person's defaults in respect of that period shall be taken to be the aggregate of—
    - (i) the value for that period of that person's defaults (if any) on payments on account; and
    - (ii) the value of any default of his in respect of that period that falls within subsection (1)(b) above.
- (7) In the application of subsection (6) above for the calculation of the aggregate value of a person's defaults in respect of a prescribed accounting period—

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- (a) the amount of outstanding VAT referred to in paragraph (d) of that subsection is the amount (if any) which would be the amount of that person's outstanding VAT for that period for the purposes of section 59(4); and
  - (b) the amount of unpaid payments on account referred to in that paragraph is the amount (if any) equal to so much of any payments on account of VAT (being payments in respect of that period) as has not been received by the Commissioners by the last day on which that person is required (as mentioned in section 59(1)) to make a return for that period.
- (8) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal—
  - (a) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(a) above—
    - (i) that the payment on account of VAT was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners by the day on which it became due, or
    - (ii) that there is a reasonable excuse for the payment not having been so despatched,
  - or
  - (b) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(b) above, that the condition specified in section 59(7)(a) or (b) is satisfied as respects the default,he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).
- (9) For the purposes of subsection (8) above, a default is material to a surcharge if—
  - (a) it is the default which, by virtue of subsection (4) above, gives rise to the surcharge; or
  - (b) it is a default which was taken into account in the service of the surcharge liability notice upon which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a prescribed accounting period ending within the surcharge period specified in or extended by that notice.
- (10) In any case where—
  - (a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within section 69(1), and
  - (b) by reason of that conduct, the person concerned is assessed to a penalty under section 69,the default shall be left out of account for the purposes of subsections (2) to (5) above.

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- (11) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (5) above.
- (12) For the purposes of this section the Commissioners shall be taken not to receive a payment by the day on which it becomes due unless it is made in such a manner as secures (in a case where the payment is made otherwise than in cash) that, by the last day for the payment of that amount, all the transactions can be completed that need to be completed before the whole amount of the payment becomes available to the Commissioners.
- (13) In determining for the purposes of this section whether any person would, but for section 59(1A), be in default in respect of any period for the purposes of section 59, subsection (12) above shall be deemed to apply for the purposes of section 59 as it applies for the purposes of this section.
- (14) For the purposes of this section references to a thing's being done by any day include references to its being done on that day."
- (3) In section 59, at the beginning of subsection (1) (circumstances amounting to a default in respect of any prescribed accounting period), there shall be inserted "Subject to subsection (1A) below"; and after that subsection there shall be inserted the following subsection—
  - "(1A) A person shall not be regarded for the purposes of this section as being in default in respect of any prescribed accounting period if that period is one in respect of which he is required by virtue of any order under section 28 to make any payment on account of VAT."
- (4) After subsection (10) of that section there shall be inserted the following subsection—
  - "(11) For the purposes of this section references to a thing's being done by any day include references to its being done on that day."
- (5) After the section 59A inserted by subsection (2) above there shall be inserted the following section—

**"59B Relationship between sections 59 and 59A.**

- (1) This section applies in each of the following cases, namely—
  - (a) where a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person (whether before or after the coming into force of section 59A) of a surcharge liability notice under section 59; and
  - (b) where a prescribed accounting period which is not a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person of a surcharge liability notice under section 59A.
- (2) In a case falling within subsection (1)(a) above section 59A shall have effect as if—
  - (a) subject to paragraph (b) below, the section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59A; but

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- (b) any question—
  - (i) whether a surcharge period was begun or extended by the notice, or
  - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was not a section 28 accounting period but ended within the surcharge period begun or extended by that notice,were to be determined as it would be determined for the purposes of section 59.
- (3) In a case falling within subsection (1)(b) above section 59 shall have effect as if—
  - (a) subject to paragraph (b) below, the prescribed accounting period that is not a section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59;
  - (b) any question—
    - (i) whether a surcharge period was begun or extended by the notice, or
    - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was a section 28 accounting period but ended within the surcharge period begun or extended by that notice,were to be determined as it would be determined for the purposes of section 59A; and
  - (c) that person were to be treated as having had outstanding VAT for a section 28 accounting period in any case where the aggregate value of his defaults in respect of that period was, for the purposes of section 59A, more than nil.
- (4) In this section “a section 28 accounting period”, in relation to a taxable person, means any prescribed accounting period ending on or after the day on which the Finance Act 1996 was passed in respect of which that person is liable by virtue of an order under section 28 to make any payment on account of VAT.”
- (6) In section 69(4)(a) and (9)(b) (disregard in connection with penalties for breach of regulations of conduct giving rise to a surcharge), after the words “section 59”, in each case, there shall be inserted “ or 59A ”.
- (7) In section 76(1) and (3)(a) (assessments for surcharges), after the words “section 59”, in each case, there shall be inserted “ or 59A ”.
- (8) This section applies in relation to any prescribed accounting period ending on or after 1st June 1996, but a liability to make a payment on account of VAT shall be disregarded for the purposes of the amendments made by this section if the payment is one becoming due before that date.

### **36 Repeated misdeclaration penalty.**

- (1) In section 64 of the <sup>M42</sup>Value Added Tax Act 1994 (repeated misdeclaration penalty), the following subsections shall be substituted for subsections (6) and (7) (inaccuracies treated as not material)—

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- “(6) Subject to subsection (6A) below, where by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under section 60 or 63,
- the inaccuracy concerned shall not be regarded as material for the purposes of this section.
- (6A) Subsection (6) above shall not prevent an inaccuracy by reason of which a person has been assessed to a penalty under section 63—
- (a) from being regarded as a material inaccuracy in respect of which the Commissioners may serve a penalty liability notice under subsection (2) above; or
  - (b) from being regarded for the purposes of subsection (3) above as a material inaccuracy by reference to which any prescribed accounting period falling within the penalty period is to be treated as the first prescribed accounting period so falling in respect of which there is a material inaccuracy.
- (7) Where subsection (5) or (6) above requires any inaccuracy to be regarded as not material for the purposes of the serving of a penalty liability notice, any such notice served in respect of that inaccuracy shall be deemed not to have been served.”

- (2) This section has effect in relation to inaccuracies contained in returns made on or after the day on which this Act is passed.

#### Marginal Citations

M42 1994 c. 23.

### 37 Penalties for failure to notify.

- (1) In section 67 of the <sup>M43</sup>Value Added Tax Act 1994 (penalty for failure to notify liability to be registered under Schedule 1, etc.)—
- (a) in subsection (1)(a), after “6” there shall be inserted “, 7 ”; and
  - (b) in subsection (3)(a), for “or 6” there shall be substituted “, 6 or 7 ”.
- (2) Subject to subsection (3) below, subsection (1) above shall apply in relation to—
- (a) any person becoming liable to be registered by virtue of sub-paragraph (2) of paragraph 1 of Schedule 1 to the <sup>M44</sup>Value Added Tax Act 1994 on or after 1st January 1996; and
  - (b) any person who became liable to be registered by virtue of that sub-paragraph before that date but who had not notified the Commissioners of the liability before that date.
- (3) In relation to a person falling within subsection (2)(b) above, section 67 of the Value Added Tax Act 1994 shall have effect as if in subsection (3)(a) for the words “the date with effect from which he is, in accordance with that paragraph, required to be registered” there were substituted “ 1st January 1996 ”.



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#### Marginal Citations

**M43** 1994 c. 23.

**M44** 1994 c. 23.

### 38 VAT invoices and accounting.

- (1) Paragraph 2 of Schedule 11 to the <sup>M45</sup>Value Added Tax Act 1994 (regulations about accounting for VAT, VAT invoices etc.) shall be amended as follows.
- (2) After sub-paragraph (2) there shall be inserted the following sub-paragraph—
  - “(2A) Regulations under this paragraph may confer power on the Commissioners to allow the requirements of any regulations as to the statements and other matters to be contained in a VAT invoice to be relaxed or dispensed with.”
- (3) In sub-paragraph (10) (adjustments of VAT accounts), at the end of paragraph (c) there shall be inserted “and
  - (d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates; and
  - (e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d) above.”

#### Marginal Citations

**M45** 1994 c. 23.

## PART III

### LANDFILL TAX

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

- C1** Pt. III (ss. 39-71) applied (29.4.1996) by 1986 c. 45, Sch. 6 paras. 3B, **8B** (as inserted (29.4.1996) by 1996 c. 8, s. 60, **Sch. 5 Pt. III para. 12**)  
Pt. III (ss. 39-71) applied (31.7.1998) by 1998 c. 36, s. **148(4)**

#### *The basic provisions*

### 39 Landfill tax.

- (1) A tax, to be known as landfill tax, shall be charged in accordance with this Part.
- (2) The tax shall be under the care and management of the Commissioners of Customs and Excise.

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#### **40 Charge to tax.**

- (1) Tax shall be charged on a taxable disposal.
- (2) A disposal is a taxable disposal if—
  - (a) it is a disposal of material as waste,
  - (b) it is made by way of landfill,
  - (c) it is made at a landfill site, and
  - (d) it is made on or after 1st October 1996.
- (3) For this purpose a disposal is made at a landfill site if the land on or under which it is made constitutes or falls within land which is a landfill site at the time of the disposal.

#### **41 Liability to pay tax.**

- (1) The person liable to pay tax charged on a taxable disposal is the landfill site operator.
- (2) The reference here to the landfill site operator is to the person who is at the time of the disposal the operator of the landfill site which constitutes or contains the land on or under which the disposal is made.

#### **42 Amount of tax.**

- (1) The amount of tax charged on a taxable disposal shall be found by taking—
  - (a) £7 for each whole tonne disposed of and a proportionately reduced sum for any additional part of a tonne, or
  - (b) a proportionately reduced sum if less than a tonne is disposed of.
- (2) Where the material disposed of consists entirely of qualifying material this section applies as if the reference to £7 were to £2.
- (3) Qualifying material is material for the time being listed for the purposes of this section in an order.
- (4) The Treasury must have regard to the object of securing that material is listed if it is of a kind commonly described as inactive or inert.

### *Exemptions*

#### **43 Material removed from water.**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which—
  - (a) has been removed (by dredging or otherwise) from water falling within subsection (2) below, and
  - (b) formed part of or projected from the bed of the water concerned before its removal.
- (2) Water falls within this subsection if it is—
  - (a) a river, canal or watercourse (whether natural or artificial), or
  - (b) a dock or harbour (whether natural or artificial).

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- (3) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which—
- (a) has been removed (by dredging or otherwise) from water falling within the approaches to a harbour (whether natural or artificial),
  - (b) has been removed in the interests of navigation, and
  - (c) formed part of or projected from the bed of the water concerned before its removal.
- (4) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which—
- (a) consists of naturally occurring mineral material, and
  - (b) has been removed (by dredging or otherwise) from the sea in the course of commercial operations carried out to obtain substances such as sand or gravel from the seabed.

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#### **[<sup>F1</sup>43A Contaminated land.**

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is a disposal within subsection (2) below.
- (2) A disposal is within this subsection if—
- (a) it is of material all of which has been removed from land in relation to which a certificate issued under section 43B below was in force at the time of the removal;
  - (b) none of that material has been removed from a part of the land in relation to which, as at the time of the removal, the qualifying period has expired;
  - (c) it is a disposal in relation to which any conditions to which the certificate was made subject are satisfied; and
  - (d) it is not a disposal within subsection (4) below.
- (3) For the purpose of subsection (2)(b) above the qualifying period expires, in relation to the part of the land in question—
- (a) in the case of a reclamation which qualified under section 43B(7)(a) below, where the object involves the construction of—
    - (i) a building; or
    - (ii) a civil engineering work,
 when the construction commences;
  - (b) in any other case of a reclamation which qualified under section 43B(7)(a) below, when pollutants have been cleared to the extent that they no longer prevent the object from being fulfilled; or
  - (c) in the case of a reclamation which qualified under section 43B(7)(b) below, when pollutants have been cleared to the extent that the potential for harm has been removed.
- (4) Subject to subsection (5) below, a disposal is within this subsection if it is of material the removal of any of which is required in order to comply with—

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- (a) a works notice served under section 46A of the Control of Pollution Act 1974;<sup>F2</sup>
  - (b) an enforcement notice served under section 13 of the Environmental Protection Act 1990;<sup>F3</sup>
  - (c) a prohibition notice served under section 14 of the Environmental Protection Act 1990;
  - (d) an order under section 26 of the Environmental Protection Act 1990;
  - (e) a remediation notice served under section 78E of the Environmental Protection Act 1990<sup>F4</sup>,
  - (f) an enforcement notice served under section 90B of the Water Resources Act 1991;<sup>F5</sup> or
  - (g) a works notice served under section 161A of the Water Resources Act 1991.<sup>F6</sup>
- (5) A disposal shall not be regarded as falling within subsection (4) above where the removal of the material has been carried out by or on behalf of any of the following bodies:
- (a) a local authority;
  - (b) a development corporation;
  - (c) the Environment Agency;
  - (d) the Scottish Environment Protection Agency;
  - (e) English Partnerships;
  - (f) Scottish Enterprise;
  - (g) Highlands and Islands Enterprise;
  - (h) the Welsh Development Agency.
- (6) In this section —
- “development corporation” means —
- (a) in England and Wales, a corporation established under section 135 of the Local Government, Planning and Land Act 1980;<sup>F7</sup>
  - (b) in Scotland, a corporation established under section 2 of the New Towns (Scotland) Act 1968;<sup>F8</sup>
- “English Partnerships” means the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993;<sup>F9</sup>
- “Highlands and Islands Enterprise” means the body established by section 1(b) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F10</sup>
- “land” includes land covered by water;
- “Scottish Enterprise” means the corporation established by section 1(a) of the Enterprise and New Towns (Scotland) Act 1990;<sup>F11</sup>
- “the Welsh Development Agency” means the body established by section 1 of the Welsh Development Agency Act 1975.<sup>F12</sup>
- (7) For the purposes of this section —
- (a) the removal of material includes its removal from one part of the land for disposal on another part of the same land;
  - (b) the clearing of pollutants includes their being cleared from one part of the land for disposal on another part of the same land.]

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### Textual Amendments

- F1** Ss. 43A, 43B inserted (1.8.1996) by S.I. 1996/1529, **art. 3**
- F2** 1974 c.40; **section 46A** was inserted by section 120 of, and Schedule 22 to, the **Environment Act 1995** (c.25).
- F3** 1990 c.43.
- F4** 1990 c.43; **section 78E** was inserted by section 57 of the Environment Act 1995.
- F5** 1991 c.57; **section 90B** was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F6** 1991 c.57; **section 161A** was inserted by section 120 of, and Schedule 22 to, the Environment Act 1995.
- F7** 1980 c.65.
- F8** 1968 c.16.
- F9** 1993 c.28.
- F10** 1990 c.35.
- F11** 1990 c.35.
- F12** 1975 c.70.

VALID FROM 01/08/1996

### **43B** <sup>F13</sup> **Contaminated land: certificates.**

- (1) Subject to subsection (2) below, the Commissioners shall issue a certificate in relation to any land where —
  - (a) an application in writing is made by a person carrying out, or intending to carry out, a reclamation of that land (the applicant);
  - (b) the applicant provides to them such information as they may direct, whether generally or as regards that particular case;
  - (c) the application is made not less than 30 days before the date from which the certificate is to take effect; and
  - (d) the reclamation qualifies under subsection (7) below.
- (2) The Commissioners shall not refuse an application for a certificate in a case where the conditions specified in subsection (1)(a) to (d) above are satisfied unless it appears to them —
  - (a) necessary to do so for the protection of the revenue; or
  - (b) except where the applicant is one of the bodies mentioned in subsection (5) of section 43A above, that all or part of the reclamation of land to which the application relates is required in order to comply with a notice or order mentioned in subsection (4) of that section.
- (3) The Commissioners may make a certificate subject to such conditions set out in the certificate as they think fit, including (but not restricted to) conditions —
  - (a) that the certificate is to be in force only in relation to a particular quantity of material;
  - (b) that the certificate is to be in force only in relation to disposals made at a particular landfill site or sites;
  - (c) that the certificate is to be in force in relation to part only of the land to which the application relates.
- (4) A certificate issued under this section —

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- (a) shall have effect from the date it is issued to the applicant or such later date as the Commissioners may specify in the certificate; and
  - (b) shall cease to have effect on such date as the Commissioners may set out in the certificate, but in any event no later than the day on which the person to whom the certificate was issued ceases to have the intention to carry out any activity involving reclamation of the land in relation to which the certificate was issued.
- (5) Where a certificate has been issued to a person, the Commissioners —
- (a) may vary it by issuing a further certificate to that person; or
  - (b) may withdraw it by giving notice in writing to that person; but this is subject to subsection (6) below.
- (6) The Commissioners shall not withdraw a certificate unless it appears to them —
- (a) necessary to do so for the protection of the revenue;
  - (b) that the reclamation did not in fact qualify under subsection (7) below or no longer so qualifies;
  - (c) that there will not be any or any more disposals within section 43A(2) above of material from the land to which the certificate relates; or
  - (d) except where the person to whom the certificate was issued is one of the bodies mentioned in subsection (5) of section 43A above, that the removal of material from the land to which the certificate relates is required in order to comply with a notice or order mentioned in subsection (4) of that section.
- (7) A reclamation qualifies under this subsection if —
- (a) it is, or is to be, carried out with the object of facilitating development, conservation, the provision of a public park or other amenity, or the use of the land for agriculture or forestry; or
  - (b) in a case other than one within paragraph (a) above, it is, or is to be, carried out with the object of reducing or removing the potential of pollutants to cause harm,
- and, in either case, the conditions specified in subsection (8) below are satisfied.
- (8) The conditions mentioned in subsection (7) above are —
- (a) that the reclamation constitutes or includes clearing the land of pollutants which are causing harm or have the potential for causing harm;
  - (b) that, in a case within subsection (7)(a) above, those pollutants would (unless cleared) prevent the object concerned being fulfilled; and
  - (c) that all relevant activities have ceased or have ceased to give rise to any pollutants in relation to that land.
- (9) For the purposes of subsection (8) above the clearing of pollutants —
- (a) need not be such that all pollutants are removed;
  - (b) need not be such that pollutants are removed from every part of the land in which they are present;
  - (c) may involve their being cleared from one part of the land and disposed of on another part of the same land.
- (10) For the purposes of subsection (8)(c) above an activity is relevant if —
- (a) it has at any time resulted in the presence of pollutants in, on or under the land in question otherwise than —

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- (i) without the consent of the person who was the occupier of the land at the time, or
- (ii) by allowing pollutants to be carried onto the land by air or water, and
- (b) at that time it was carried out —
  - (i) by the applicant or a person connected with him, or
  - (ii) by any person on the land in question.
- (11) For the purposes of subsection (10) above —
  - (a) any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act 1988; <sup>F14</sup>
  - (b) the occupier of land that is not in fact occupied is the person entitled to occupy it.
- (12) In this section “land” has the meaning given by section 43A(6) above.

#### Textual Amendments

**F13** Ss. 43A, 43B, inserted (1.8.1996) by S.I. 1996/1529, **art. 3**

**F14** Section 204 of the Finance Act 1996 (c.8) defines "the Taxes Act 1988" as meaning the [Income and Corporation Taxes Act 1988 \(c.1\)](#); section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c.4).

VALID FROM 01/10/1999

#### [<sup>F15</sup>43C Site restoration.

- (1) A disposal is not a taxable disposal for the purposes of this Part if—
  - (a) the disposal is of material all of which is treated for the purposes of section 42 above as qualifying material,
  - (b) before the disposal the operator of the landfill site notifies the Commissioners in writing that he is commencing the restoration of all or a part of the site and provides such other written information as the Commissioners may require generally or in the particular case, and
  - (c) the material is deposited on and used in the restoration of the site or part specified in the notification under paragraph (b) above.
- (2) In this section “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.
- (3) The following are relevant instruments—
  - (a) a planning consent;
  - (b) a waste management licence;
  - (c) resolution authorising the disposal of waste on or in land.]

#### Textual Amendments

**F15** S. 43C inserted (1.10.1999) by S.I. 1999/2075, **art. 2(a)**

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#### 44 Mining and quarrying.

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is shown to the satisfaction of the Commissioners that the disposal is of material all of which fulfils each of the conditions set out in subsections (2) to (4) below.
- (2) The material must result from commercial mining operations (whether the mining is deep or open-cast) or from commercial quarrying operations.
- (3) The material must be naturally occurring material extracted from the earth in the course of the operations.
- (4) The material must not have been subjected to, or result from, a non-qualifying process carried out at any stage between the extraction and the disposal.
- (5) A non-qualifying process is—
  - (a) a process separate from the mining or quarrying operations, or
  - (b) a process forming part of those operations and permanently altering the material's chemical composition.

VALID FROM 01/10/1999

#### <sup>F16</sup>44A Quarries.

- (1) A disposal is not a taxable disposal for the purposes of this Part if it is—
  - (a) of material all of which is treated for the purposes of section 42 above as qualifying material,
  - (b) made at a qualifying landfill site, and
  - (c) made, or treated as made, on or after 1st October 1999.
- (2) A landfill site is a qualifying landfill site for the purposes of this section if at the time of the disposal—
  - (a) the landfill site is or was a quarry,
  - (b) subject to subsection (3) below, it is a requirement of planning consent in respect of the land in which the quarry or former quarry is situated that it be wholly or partially refilled, and
  - (c) subject to subsection (4) below, the licence or, as the case may require, resolution authorising disposals on or in the land comprising the site permits only the disposal of material which comprises qualifying material.
- (3) Where a quarry—
  - (a) was in existence before 1st October 1999, and
  - (b) quarrying operations ceased before that date,
 the requirement referred to in subsection (2)(b) must have been imposed on or before that date.
- (4) Where a licence authorising disposals on or in the land does not (apart from the application of this subsection) meet the requirements of subsection (2)(c) above and an application has been made to vary the licence in order to meet them, it shall be deemed to meet them for the period before—
  - (a) the application is disposed of, or



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- (b) the second anniversary of the making of the application if it occurs before the application is disposed of.
- (5) For the purposes of subsection (4) an application is disposed of if—
- (a) it is granted,
  - (b) it is withdrawn,
  - (c) it is refused and there is no right of appeal against the refusal,
  - (d) a time limit for appeal against refusal expires without an appeal having been commenced, or
  - (e) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal.]

#### Textual Amendments

**F16** S. 44A inserted (1.10.1999) by [S.I. 1999/2075](#), [art. 2\(b\)](#)

#### 45 Pet cemeteries.

- (1) A disposal is not a taxable disposal for the purposes of this Part if—
- (a) the disposal is of material consisting entirely of the remains of dead domestic pets, and
  - (b) the landfill site at which the disposal is made fulfils the test set out in subsection (2) below.
- (2) The test is that during the relevant period—
- (a) no landfill disposal was made at the site, or
  - (b) the only landfill disposals made at the site were of material consisting entirely of the remains of dead domestic pets.
- (3) For the purposes of subsection (2) above the relevant period—
- (a) begins with 1st October 1996 or (if later) with the coming into force in relation to the site of the licence or resolution mentioned in section 66 below, and
  - (b) ends immediately before the disposal mentioned in subsection (1) above.

#### 46 Power to vary.

- (1) Provision may be made by order to produce the result that—
- (a) a disposal which would otherwise be a taxable disposal (by virtue of this Part as it applies for the time being) is not a taxable disposal;
  - (b) a disposal which would otherwise not be a taxable disposal (by virtue of this Part as it applies for the time being) is a taxable disposal.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may—
- (a) confer exemption by reference to certificates issued by the Commissioners and to conditions set out in certificates;
  - (b) allow the Commissioners to direct requirements to be met before certificates can be issued;
  - (c) provide for the review of decisions about certificates and for appeals relating to decisions on review.

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- (3) Provision may be made under this section in such way as the Treasury think fit (whether by amending this Part or otherwise).

### *Administration*

#### **47 Registration.**

- (1) The register kept under this section may contain such information as the Commissioners think is required for the purposes of the care and management of the tax.
- (2) A person who—
- (a) carries out taxable activities, and
  - (b) is not registered,
- is liable to be registered.
- (3) Where—
- (a) a person at any time forms the intention of carrying out taxable activities, and
  - (b) he is not registered,
- he shall notify the Commissioners of his intention.
- (4) A person who at any time ceases to have the intention of carrying out taxable activities shall notify the Commissioners of that fact.
- (5) Where a person is liable to be registered by virtue of subsection (2) above the Commissioners shall register him with effect from the time when he begins to carry out taxable activities; and this subsection applies whether or not he notifies the Commissioners under subsection (3) above.
- (6) Where the Commissioners are satisfied that a person has ceased to carry out taxable activities they may cancel his registration with effect from the earliest practicable time after he so ceased; and this subsection applies whether or not he notifies the Commissioners under subsection (4) above.
- (7) Where—
- (a) a person notifies the Commissioners under subsection (4) above,
  - (b) they are satisfied that he will not carry out taxable activities,
  - (c) they are satisfied that no tax which he is liable to pay is unpaid,
  - (d) they are satisfied that no credit to which he is entitled under regulations made under section 51 below is outstanding, and
  - (e) subsection (8) below does not apply,
- the Commissioners shall cancel his registration with effect from the earliest practicable time after he ceases to carry out taxable activities.
- (8) Where—
- (a) a person notifies the Commissioners under subsection (4) above, and
  - (b) they are satisfied that he has not carried out, and will not carry out, taxable activities,
- the Commissioners shall cancel his registration with effect from the time when he ceased to have the intention to carry out taxable activities.

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- (9) For the purposes of this section regulations may make provision—
- (a) as to the time within which a notification is to be made;
  - (b) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it;
  - (c) requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate;
  - (d) as to the correction of entries in the register.
- (10) References in this Part to a registrable person are to a person who—
- (a) is registered under this section, or
  - (b) is liable to be registered under this section.

#### **48 Information required to keep register up to date.**

- (1) Regulations may make provision requiring a registrable person to notify the Commissioners of particulars which—
- (a) are of changes in circumstances relating to the registrable person or any business carried on by him,
  - (b) appear to the Commissioners to be required for the purpose of keeping the register kept under section 47 above up to date, and
  - (c) are of a prescribed description.
- (2) Regulations may make provision—
- (a) as to the time within which a notification is to be made;
  - (b) as to the form and manner in which a notification is to be made;
  - (c) requiring a person who has made a notification to notify the Commissioners if any information contained in it is inaccurate.

#### **49 Accounting for tax and time for payment.**

Regulations may provide that a registrable person shall—

- (a) account for tax by reference to such periods (accounting periods) as may be determined by or under the regulations;
- (b) make, in relation to accounting periods, returns in such form as may be prescribed and at such times as may be so determined;
- (c) pay tax at such times and in such manner as may be so determined.

#### **50 Power to assess.**

- (1) Where—
- (a) a person has failed to make any returns required to be made under this Part,
  - (b) a person has failed to keep any documents necessary to verify returns required to be made under this Part,
  - (c) a person has failed to afford the facilities necessary to verify returns required to be made under this Part, or
  - (d) it appears to the Commissioners that returns required to be made by a person under this Part are incomplete or incorrect,

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the Commissioners may assess the amount of tax due from the person concerned to the best of their judgment and notify it to him.

- (2) Where a person has for an accounting period been paid an amount to which he purports to be entitled under regulations made under section 51 below, then, to the extent that the amount ought not to have been paid or would not have been paid had the facts been known or been as they later turn out to be, the Commissioners may assess the amount as being tax due from him for that period and notify it to him accordingly.
- (3) Where a person is assessed under subsections (1) and (2) above in respect of the same accounting period the assessments may be combined and notified to him as one assessment.
- (4) Where the person failing to make a return, or making a return which appears to the Commissioners to be incomplete or incorrect, was required to make the return as a personal representative, trustee in bankruptcy, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, subsection (1) above shall apply as if the reference to tax due from him included a reference to tax due from that other person.
- (5) An assessment under subsection (1) or (2) above of an amount of tax due for an accounting period shall not be made after the later of the following—
  - (a) two years after the end of the accounting period;
  - (b) one year after evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, comes to their knowledge;
 but where further such evidence comes to their knowledge after the making of an assessment under subsection (1) or (2) above another assessment may be made under the subsection concerned in addition to any earlier assessment.
- (6) Where—
  - (a) as a result of a person's failure to make a return in relation to an accounting period the Commissioners have made an assessment under subsection (1) above for that period,
  - (b) the tax assessed has been paid but no proper return has been made in relation to the period to which the assessment related, and
  - (c) as a result of a failure to make a return in relation to a later accounting period, being a failure by the person referred to in paragraph (a) above or a person acting in a representative capacity in relation to him, as mentioned in subsection (4) above, the Commissioners find it necessary to make another assessment under subsection (1) above,
 then, if the Commissioners think fit, having regard to the failure referred to in paragraph (a) above, they may specify in the assessment referred to in paragraph (c) above an amount of tax greater than that which they would otherwise have considered to be appropriate.
- (7) Where an amount has been assessed and notified to any person under subsection (1) or (2) above it shall be deemed to be an amount of tax due from him and may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (8) For the purposes of this section notification to—
  - (a) a personal representative, trustee in bankruptcy, receiver or liquidator, or

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- (b) a person otherwise acting in a representative capacity in relation to another person,  
shall be treated as notification to the person in relation to whom the person mentioned in paragraph (a) above, or the first person mentioned in paragraph (b) above, acts.
- (9) Subsection (5) above has effect subject to paragraph 33 of Schedule 5 to this Act.
- (10) In this section “trustee in bankruptcy” means, as respects Scotland, an interim or permanent trustee (within the meaning of the <sup>M46</sup>Bankruptcy (Scotland) Act 1985) or a trustee acting under a trust deed (within the meaning of that Act).

#### Marginal Citations

M46 1985 c. 66.

### *Credit*

#### **51 Credit: general.**

- (1) Regulations may provide that where—
- (a) a person has paid or is liable to pay tax, and
  - (b) prescribed conditions are fulfilled,
- the person shall be entitled to credit of such an amount as is found in accordance with prescribed rules.
- (2) Regulations may make provision as to the manner in which a person is to benefit from credit, and in particular may make provision—
- (a) that a person shall be entitled to credit by reference to accounting periods;
  - (b) that a person shall be entitled to deduct an amount equal to his total credit for an accounting period from the total amount of tax due from him for the period;
  - (c) that if no tax is due from a person for an accounting period but he is entitled to credit for the period, the amount of the credit shall be paid to him by the Commissioners;
  - (d) that if the amount of credit to which a person is entitled for an accounting period exceeds the amount of tax due from him for the period, an amount equal to the excess shall be paid to him by the Commissioners;
  - (e) for the whole or part of any credit to be held over to be credited for a subsequent accounting period;
  - (f) as to the manner in which a person who has ceased to be registrable is to benefit from credit.
- (3) Regulations under subsection (2)(c) or (d) above may provide that where at the end of an accounting period an amount is due to a person who has failed to submit returns for an earlier period as required by this Part, the Commissioners may withhold payment of the amount until he has complied with that requirement.
- (4) Regulations under subsection (2)(e) above may provide for credit to be held over either on the person’s application or in accordance with directions given by the Commissioners from time to time; and the regulations may allow directions to be given generally or with regard to particular cases.

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- (5) Regulations may provide that—
- (a) no benefit shall be conferred in respect of credit except on a claim made in such manner and at such time as may be determined by or under regulations;
  - (b) payment in respect of credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to repayment in specified circumstances;
  - (c) deduction in respect of credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to the payment to the Commissioners, in specified circumstances, of an amount representing the whole or part of the amount deducted.
- (6) Regulations may require a claim by a person to be made in a return required by provision made under section 49 above.
- (7) Nothing in section 52 or 53 below shall be taken to derogate from the power to make regulations under this section (whether with regard to bad debts, the environment or any other matter).

## **52 Bad debts.**

- (1) Regulations may be made under section 51 above with a view to securing that a person is entitled to credit if—
- (a) he carries out a taxable activity as a result of which he becomes entitled to a debt which turns out to be bad (in whole or in part), and
  - (b) such other conditions as may be prescribed are fulfilled.
- (2) The regulations may include provision under section 51(5)(b) or (c) above requiring repayment or payment if it turns out that it was not justified to regard a debt as bad (or to regard it as bad to the extent that it was so regarded).
- (3) The regulations may include provision for determining whether, and to what extent, a debt is to be taken to be bad.

## **53 Bodies concerned with the environment.**

- (1) Regulations may be made under section 51 above with a view to securing that a person is entitled to credit if—
- (a) he pays a sum to a body whose objects are or include the protection of the environment, and
  - (b) such other conditions as may be prescribed are fulfilled.
- (2) The regulations may in particular prescribe conditions—
- (a) requiring bodies to which sums are paid (environmental bodies) to be approved by another body (the regulatory body);
  - (b) requiring the regulatory body to be approved by the Commissioners;
  - (c) requiring sums to be paid with the intention that they be expended on such matters connected with the protection of the environment as may be prescribed.
- (3) The regulations may include provision under section 51(5)(b) or (c) above requiring repayment or payment if—

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- (a) a sum is not in fact expended on matters prescribed under subsection (2)(c) above, or
  - (b) a prescribed condition turns out not to have been fulfilled.
- (4) The regulations may include—
- (a) provision for determining the amount of credit (including provision for limiting it);
  - (b) provision that matters connected with the protection of the environment include such matters as overheads (including administration) of environmental bodies and the regulatory body;
  - (c) provision as to the matters by reference to which an environmental body or the regulatory body can be, and remain, approved (including matters relating to the functions and activities of any such body);
  - (d) provision allowing approval of an environmental body or the regulatory body to be withdrawn (whether prospectively or retrospectively);
  - (e) provision that, if approval of the regulatory body is withdrawn, another body may be approved in its place or its functions may be performed by the Commissioners;
  - (f) provision allowing the Commissioners to disclose to the regulatory body information which relates to the tax affairs of persons carrying out taxable activities and which is relevant to the credit scheme established by the regulations.

### *Review and appeal*

VALID FROM 01/10/1996

#### **54 Review of Commissioners' decisions.**

- (1) This section applies to the following decisions of the Commissioners—
- (a) a decision as to the registration or cancellation of registration of any person under this Part;
  - (b) a decision as to whether tax is chargeable in respect of a disposal or as to how much tax is chargeable;
  - <sup>F17</sup>(ba) a decision to refuse an application for a certificate under section 43B above, or to withdraw such a certificate;
  - <sup>F17</sup>(bb) a decision to make a certificate issued under section 43B above subject to a condition that it is to be in force in relation to part only of the land to which the application for the certificate related;]
  - (c) a decision as to whether a person is entitled to credit by virtue of regulations under section 51 above or as to how much credit a person is entitled to or as to the manner in which he is to benefit from credit;
  - (d) a decision as to an assessment falling within subsection (2) below or as to the amount of such an assessment;
  - (e) a decision to refuse a request under section 58(3) below;
  - (f) a decision to refuse an application under section 59 below;
  - (g) a decision as to whether conditions set out in a specification under the authority of provision made under section 68(4)(b) below are met in relation to a disposal;

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- (h) a decision to give a direction under any provision contained in regulations by virtue of section 68(5) below;
  - (i) a decision as to a claim for the repayment of an amount under paragraph 14 of Schedule 5 to this Act;
  - (j) a decision as to liability to a penalty under Part V of that Schedule or as to the amount of such a penalty;
  - (k) a decision under paragraph 19 of that Schedule (as mentioned in paragraph 19(5));
  - (l) a decision as to any liability to pay interest under paragraph 26 or 27 of that Schedule or as to the amount of the interest payable;
  - (m) a decision as to any liability to pay interest under paragraph 29 of that Schedule or as to the amount of the interest payable;
  - (n) a decision to require any security under paragraph 31 of that Schedule or as to its amount;
  - (o) a decision as to the amount of any penalty or interest specified in an assessment under paragraph 32 of that Schedule.
- (2) An assessment falls within this subsection if it is an assessment under section 50 above in respect of an accounting period in relation to which a return required to be made by virtue of regulations under section 49 above has been made.
- (3) Any person who is or will be affected by any decision to which this section applies may by notice in writing to the Commissioners require them to review the decision.
- (4) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.
- (5) For the purposes of subsection (4) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
- (a) requests such a notification,
  - (b) has not previously been given written notification of that decision, and
  - (c) if given such a notification, will be entitled to require a review of the decision under this section.
- (6) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters, and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue not previously considered.
- (7) Where the Commissioners are required in accordance with this section to review any decision it shall be their duty to do so; and on the review they may withdraw, vary or confirm the decision.
- (8) Where—
- (a) it is the duty under this section of the Commissioners to review any decision, and



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- (b) they do not, within the period of 45 days beginning with the day on which the review was required, give notice to the person requiring it of their determination on the review,
- they shall be deemed for the purposes of this Part to have confirmed the decision.

#### Textual Amendments

**F17** S. 54(1)(ba)(bb) inserted (1.10.1996 with effect as mentioned in s. 57 of this Act) by S.I. 1996/1529, arts. 1, 4

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

**C2** Ss. 54-56 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. V para. 19(3)

#### Commencement Information

**I4** S. 54 in force by 1.10.1996 at the latest see s. 57

VALID FROM 01/10/1996

### 55 Appeals: general.

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions—
- (a) any decision by the Commissioners on a review under section 54 above (including a deemed confirmation under subsection (8) of that section);
  - (b) any decision by the Commissioners on such review of a decision referred to in section 54(1) above as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 54(4) above.
- (2) Where an appeal is made under this section by a person who is required to make returns by virtue of regulations under section 49 above, the appeal shall not be entertained unless the appellant—
- (a) has made all the returns which he is required to make by virtue of those regulations, and
  - (b) has paid the amounts shown in those returns as payable by him.
- (3) Where an appeal is made under this section with respect to a decision falling within section 54(1)(b) or (d) above the appeal shall not be entertained unless—
- (a) the amount which the Commissioners have determined to be payable as tax has been paid or deposited with them, or
  - (b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that that amount has not been so paid or deposited.
- (4) On an appeal under this section against an assessment to a penalty under paragraph 18 of Schedule 5 to this Act, the burden of proof as to the matters specified in paragraphs (a) and (b) of sub-paragraph (1) of paragraph 18 shall lie upon the Commissioners.

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

**C3** Ss. 54-56 extended (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. V para. 19(3)**

#### Commencement Information

**I5** **S. 55** in force by 1.10.1993 at the latest see **s. 57**.

VALID FROM 01/10/1996

### 56 Appeals: other provisions.

- (1) Subsection (2) below applies where the Commissioners make a decision falling within section 54(1)(d) above and on a review of it there is a further decision with respect to which an appeal is made under section 55 above; and the reference here to a further decision includes a reference to a deemed confirmation under section 54(8) above.
- (2) Where on the appeal—
  - (a) it is found that the amount specified in the assessment is less than it ought to have been, and
  - (b) the tribunal gives a direction specifying the correct amount,
 the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant.
- (3) Where on an appeal under section 55 above it is found that the whole or part of any amount paid or deposited in pursuance of section 55(3) above is not due, so much of that amount as is found not to be due shall be repaid with interest at such rate as the tribunal may determine.
- (4) Where on an appeal under section 55 above it is found that the whole or part of any amount due to the appellant by virtue of regulations under section 51(2)(c) or (d) or (f) above has not been paid, so much of that amount as is found not to have been paid shall be paid with interest at such rate as the tribunal may determine.
- (5) Where an appeal under section 55 above has been entertained notwithstanding that an amount determined by the Commissioners to be payable as tax has not been paid or deposited and it is found on the appeal that that amount is due the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.
- (6) Without prejudice to paragraph 25 of Schedule 5 to this Act, nothing in section 55 above shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty except in so far as it is necessary to reduce it to the amount which is appropriate under paragraphs 18 to 24 of that Schedule.
- (7) Without prejudice to paragraph 28 of Schedule 5 to this Act, nothing in section 55 above shall be taken to confer on a tribunal any power to vary an amount assessed by way of interest except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 26 or 27 of that Schedule.
- (8) Sections 85 and 87 of the <sup>M47</sup>Value Added Tax Act 1994 (settling of appeals by agreement and enforcement of certain decisions of tribunal) shall have effect as if—

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- (a) the references to section 83 of that Act included references to section 55 above, and
- (b) the references to value added tax included references to landfill tax.

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

**C4** Ss. 54-56 extended (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. V para. 19(3)**

**Commencement Information**

**I6** S. 56 in force by 1.10.1996 at the latest see s. 57.

**Marginal Citations**

**M47** 1994 c. 23.

**57 Review and appeal: commencement.**

Sections 54 to 56 above shall come into force on—

- (a) 1st October 1996, or
- (b) such earlier day as may be appointed by order.

*Miscellaneous*

**58 Partnership, bankruptcy, transfer of business, etc.**

- (1) As regards any case where a business is carried on in partnership or by another unincorporated body, regulations may make provision for determining by what persons anything required by this Part to be done by a person is to be done.
- (2) The registration under this Part of an unincorporated body other than a partnership may be in the name of the body concerned; and in determining whether taxable activities are carried out by such a body no account shall be taken of any change in its members.
- (3) The registration under this Part of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.
- (4) As regards any case where a person carries on a business of a person who has died or become bankrupt or incapacitated or whose estate has been sequestrated, or of a person which is in liquidation or receivership or in relation to which an administration order is in force, regulations may—
  - (a) require the first-mentioned person to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;
  - (b) make provision allowing the person to be treated for a limited time as if he were the other person;
  - (c) make provision for securing continuity in the application of this Part where a person is so treated.
- (5) Regulations may make provision for securing continuity in the application of this Part in cases where a business carried on by a person is transferred to another person as a going concern.

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- (6) Regulations under subsection (5) above may in particular—
- (a) require the transferor to inform the Commissioners of the transfer;
  - (b) provide for liabilities and duties under this Part of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;
  - (c) provide for any right of either of them to repayment or credit in respect of tax to be satisfied by making a repayment or allowing a credit to the other;
- but the regulations may provide that no such provision as is mentioned in paragraph (b) or (c) of this subsection shall have effect in relation to any transferor and transferee unless an application in that behalf has been made by them under the regulations.

## 59 Groups of companies.

- (1) Where under the following provisions of this section any bodies corporate are treated as members of a group, for the purposes of this Part—
  - (a) any liability of a member of the group to pay tax shall be taken to be a liability of the representative member;
  - (b) the representative member shall be taken to carry out any taxable activities which a member of the group would carry out (apart from this section) by virtue of section 69 below;
  - (c) all members of the group shall be jointly and severally liable for any tax due from the representative member.
- (2) Two or more bodies corporate are eligible to be treated as members of a group if the condition mentioned in subsection (3) below is fulfilled and—
  - (a) one of them controls each of the others,
  - (b) one person (whether a body corporate or an individual) controls all of them, or
  - (c) two or more individuals carrying on a business in partnership control all of them.
- (3) The condition is that the prospective representative member has an established place of business in the United Kingdom.
- (4) Where an application to that effect is made to the Commissioners with respect to two or more bodies corporate eligible to be treated as members of a group, then—
  - (a) from the beginning of an accounting period they shall be so treated, and
  - (b) one of them shall be the representative member,

unless the Commissioners refuse the application; and the Commissioners shall not refuse the application unless it appears to them necessary to do so for the protection of the revenue.
- (5) Where any bodies corporate are treated as members of a group and an application to that effect is made to the Commissioners, then, from the beginning of an accounting period—
  - (a) a further body eligible to be so treated shall be included among the bodies so treated,
  - (b) a body corporate shall be excluded from the bodies so treated,
  - (c) another member of the group shall be substituted as the representative member, or
  - (d) the bodies corporate shall no longer be treated as members of a group,

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unless the application is to the effect mentioned in paragraph (a) or (c) above and the Commissioners refuse the application.

- (6) The Commissioners may refuse an application under subsection (5)(a) or (c) above only if it appears to them necessary to do so for the protection of the revenue.
- (7) Where a body corporate is treated as a member of a group as being controlled by any person and it appears to the Commissioners that it has ceased to be so controlled, they shall, by notice given to that person, terminate that treatment from such date as may be specified in the notice.
- (8) An application under this section with respect to any bodies corporate must be made by one of those bodies or by the person controlling them and must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Commissioners may allow.
- (9) For the purposes of this section a body corporate shall be taken to control another body corporate if it is empowered by statute to control that body's activities or if it is that body's holding company within the meaning of section 736 of the <sup>M48</sup>Companies Act 1985; and an individual or individuals shall be taken to control a body corporate if he or they, were he or they a company, would be that body's holding company within the meaning of that section.

#### Marginal Citations

M48 1985 c. 6.

## 60 Information, powers, penalties, etc.

Schedule 5 to this Act (which contains provisions relating to information, powers, penalties and other matters) shall have effect.

## 61 Taxable disposals: special provisions.

- (1) Where—
  - (a) a taxable disposal is in fact made on a particular day,
  - (b) within the period of 14 days beginning with that day the person liable to pay tax in respect of the disposal issues a landfill invoice in respect of the disposal, and
  - (c) he has not notified the Commissioners in writing that he elects not to avail himself of this subsection,for the purposes of this Part the disposal shall be treated as made at the time the invoice is issued.
- (2) The reference in subsection (1) above to a landfill invoice is to a document containing such particulars as regulations may prescribe for the purposes of that subsection.
- (3) The Commissioners may at the request of a person direct that subsection (1) above shall apply—
  - (a) in relation to disposals in respect of which he is liable to pay tax, or
  - (b) in relation to such of them as may be specified in the direction,

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as if for the period of 14 days there were substituted such longer period as may be specified in the direction.

## **62 Taxable disposals: regulations.**

- (1) For the purposes of this Part, regulations may make provision under this section in relation to a disposal which is a taxable disposal (or would be apart from the regulations).
- (2) The regulations may provide that if particular conditions are fulfilled—
  - (a) the disposal shall be treated as not being a taxable disposal, or
  - (b) the disposal shall, to the extent found in accordance with prescribed rules, be treated as not being a taxable disposal.
- (3) The regulations may provide that if particular conditions are fulfilled—
  - (a) the disposal shall be treated as made at a time which is found in accordance with prescribed rules and which falls after the time when it would be regarded as made apart from the regulations, or
  - (b) the disposal shall, to the extent found in accordance with prescribed rules, be treated as made at a time which is found in accordance with prescribed rules and which falls after the time when it would be regarded as made apart from the regulations.
- (4) In finding the time when the disposal would be regarded as made apart from the regulations, section 61(1) above and any direction under section 61(3) above shall be taken into account.
- (5) The regulations may be framed by reference to—
  - (a) conditions specified in the regulations or by the Commissioners or by an authorised person, or
  - (b) any combination of such conditions;
 and the regulations may specify conditions, or allow conditions to be specified, generally or with regard to particular cases.
- (6) The regulations may make provision under subsections (2)(b) and (3)(b) above in relation to the same disposal.
- (7) The regulations may only provide that a disposal is to be treated as not being a taxable disposal if or to the extent that—
  - (a) the disposal is a temporary one pending the incineration or recycling of the material concerned, or pending the removal of the material for use elsewhere, or pending the sorting of the material with a view to its removal elsewhere or its eventual disposal, and
  - (b) the temporary disposal is made in an area designated for the purpose by an authorised person.

## **63 Qualifying material: special provisions.**

- (1) This section applies for the purposes of section 42 above.
- (2) The Commissioners may direct that where material is disposed of it must be treated as qualifying material if it would in fact be such material but for a small quantity of non-

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qualifying material; and whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction.

- (3) The Commissioners may at the request of a person direct that where there is a disposal in respect of which he is liable to pay tax the material disposed of must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material, and—
  - (a) a direction may apply to all disposals in respect of which a person is liable to pay tax or to such of them as are identified in the direction;
  - (b) whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction.
- (4) If a direction under subsection (3) above applies to a disposal any direction under subsection (2) above shall not apply to it.
- (5) An order may provide that material must not be treated as qualifying material unless prescribed conditions are met.
- (6) A condition may relate to any matter the Treasury think fit (such as the production of a document which includes a statement of the nature of the material).

#### *Interpretation*

### **64 Disposal of material as waste.**

- (1) A disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material.
- (2) The fact that the person making the disposal or any other person could benefit from or make use of the material is irrelevant.
- (3) Where a person makes a disposal on behalf of another person, for the purposes of subsections (1) and (2) above the person on whose behalf the disposal is made shall be treated as making the disposal.
- (4) The reference in subsection (3) above to a disposal on behalf of another person includes references to a disposal—
  - (a) at the request of another person;
  - (b) in pursuance of a contract with another person.

### **65 Disposal by way of landfill.**

- (1) There is a disposal of material by way of landfill if—
  - (a) it is deposited on the surface of land or on a structure set into the surface, or
  - (b) it is deposited under the surface of land.
- (2) Subsection (1) above applies whether or not the material is placed in a container before it is deposited.
- (3) Subsection (1)(b) above applies whether the material—
  - (a) is covered with earth after it is deposited, or
  - (b) is deposited in a cavity (such as a cavern or mine).

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- (4) If material is deposited on the surface of land (or on a structure set into the surface) with a view to it being covered with earth the disposal must be treated as made when the material is deposited and not when it is covered.
- (5) An order may provide that the meaning of the disposal of material by way of landfill (as it applies for the time being) shall be varied.
- (6) An order under subsection (5) above may make provision in such way as the Treasury think fit, whether by amending any of subsections (1) to (4) above or otherwise.
- (7) In this section “land” includes land covered by water where the land is above the low water mark of ordinary spring tides.
- (8) In this section “earth” includes similar matter (such as sand or rocks).

## 66 Landfill sites.

Land is a landfill site at a given time if at that time—

- (a) a licence which is a site licence for the purposes of Part II of the <sup>M49</sup>Environmental Protection Act 1990 (waste on land) is in force in relation to the land and authorises disposals in or on the land,
- (b) a resolution under section 54 of that Act (land occupied by waste disposal authorities in Scotland) is in force in relation to the land and authorises deposits or disposals in or on the land,
- (c) a disposal licence issued under Part II of the <sup>M50</sup>Pollution Control and Local Government (Northern Ireland) Order 1978 (waste on land) is in force in relation to the land and authorises deposits on the land,
- (d) a resolution passed under Article 13 of that Order (land occupied by district councils in Northern Ireland) is in force in relation to the land and relates to deposits on the land, or
- (e) a licence under any provision for the time being having effect in Northern Ireland and corresponding to section 35 of the Environmental Protection Act 1990 (waste management licences) is in force in relation to the land and authorises disposals in or on the land.

### Marginal Citations

**M49** 1990 c. 43.

**M50** S.I. 1978/1049 (N.I.19).

## 67 Operators of landfill sites.

The operator of a landfill site at a given time is—

- (a) the person who is at the time concerned the holder of the licence, where section 66(a) above applies;
- (b) the waste disposal authority which at the time concerned occupies the landfill site, where section 66(b) above applies;
- (c) the person who is at the time concerned the holder of the licence, where section 66(c) above applies;
- (d) the district council which passed the resolution, where section 66(d) above applies;



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- (e) the person who is at the time concerned the holder of the licence, where section 66(e) above applies.

## **68 Weight of material disposed of.**

- (1) The weight of the material disposed of on a taxable disposal shall be determined in accordance with regulations.
- (2) The regulations may—
  - (a) prescribe rules for determining the weight;
  - (b) authorise rules for determining the weight to be specified by the Commissioners in a prescribed manner;
  - (c) authorise rules for determining the weight to be agreed by the person liable to pay the tax and an authorised person.
- (3) The regulations may in particular prescribe, or authorise the specification or agreement of, rules about—
  - (a) the method by which the weight is to be determined;
  - (b) the time by reference to which the weight is to be determined;
  - (c) the discounting of constituents (such as water).
- (4) The regulations may include provision that a specification authorised under subsection (2)(b) above may provide—
  - (a) that it is to have effect only in relation to disposals of such descriptions as may be set out in the specification;
  - (b) that it is not to have effect in relation to particular disposals unless the Commissioners are satisfied that such conditions as may be set out in the specification are met in relation to the disposals;and the conditions may be framed by reference to such factors as the Commissioners think fit (such as the consent of an authorised person to the specification having effect in relation to disposals).
- (5) The regulations may include provision that—
  - (a) where rules are agreed as mentioned in subsection (2)(c) above, and
  - (b) the Commissioners believe that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason,the Commissioners may direct that the agreed rules shall no longer have effect.
- (6) The regulations shall be so framed that where in relation to a given disposal—
  - (a) no specification of the Commissioners has effect, and
  - (b) no agreed rules have effect,the weight shall be determined in accordance with rules prescribed in the regulations.

## **69 Taxable activities.**

- (1) A person carries out a taxable activity if—
  - (a) he makes a taxable disposal in respect of which he is liable to pay tax, or
  - (b) he permits another person to make a taxable disposal in respect of which he (the first-mentioned person) is liable to pay tax.

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- (2) Where—
- (a) a taxable disposal is made, and
  - (b) it is made without the knowledge of the person who is liable to pay tax in respect of it,
- that person shall for the purposes of this section be taken to permit the disposal.

## 70 Interpretation: other provisions.

- (1) Unless the context otherwise requires—
- “accounting period” shall be construed in accordance with section 49 above;
- “appeal tribunal” means a VAT and duties tribunal;
- “authorised person” means any person acting under the authority of the Commissioners;
- “the Commissioners” means the Commissioners of Customs and Excise;
- “conduct” includes any act, omission or statement;
- “material” means material of all kinds, including objects, substances and products of all kinds;
- “prescribed” means prescribed by an order or regulations under this Part;
- “registrable person” has the meaning given by section 47(10) above;
- “tax” means landfill tax;
- “taxable disposal” has the meaning given by section 40 above.
- (2) A landfill disposal is a disposal—
- (a) of material as waste, and
  - (b) made by way of landfill.
- (3) A reference to this Part includes a reference to any order or regulations made under it and a reference to a provision of this Part includes a reference to any order or regulations made under the provision, unless otherwise required by the context or any order or regulations.
- (4) This section and sections 64 to 69 above apply for the purposes of this Part.

### *Supplementary*

## 71 Orders and regulations.

- (1) The power to make an order under section 57 above shall be exercisable by the Commissioners, and the power to make an order under any other provision of this Part shall be exercisable by the Treasury.
- (2) Any power to make regulations under this Part shall be exercisable by the Commissioners.

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- (3) Any power to make an order or regulations under this Part shall be exercisable by statutory instrument.
- (4) An order to which this subsection applies shall be laid before the House of Commons; and unless it is approved by that House before the expiration of a period of 28 days beginning with the date on which it was made it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done under the order or to the making of a new order.
- (5) In reckoning any such period as is mentioned in subsection (4) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days.
- (6) A statutory instrument containing an order or regulations under this Part (other than an order under section 57 above or an order to which subsection (4) above applies) shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Subsection (4) above applies to—
  - (a) an order under section 42(3) above providing for material which would otherwise be qualifying material not to be qualifying material;
  - (b) an order under section 46 above which produces the result that a disposal which would otherwise not be a taxable disposal is a taxable disposal;
  - (c) an order under section 63(5) above other than one which provides only that an earlier order under section 63(5) is not to apply to material;
  - (d) an order under section 65(5) above providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal.
- (8) Any power to make an order or regulations under this Part—
  - (a) may be exercised as regards prescribed cases or descriptions of case;
  - (b) may be exercised differently in relation to different cases or descriptions of case.
- (9) An order or regulations under this Part may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury or the Commissioners (as the case may be) to be necessary or expedient.
- (10) No specific provision of this Part about an order or regulations shall prejudice the generality of subsections (8) and (9) above.

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## PART IV

### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

#### CHAPTER I

##### PRINCIPAL PROVISIONS

###### *Income tax charge, rates and reliefs*

### 72 Charge and rates of income tax for 1996-97.

- (1) Income tax shall be charged for the year 1996-97, and for that year—
  - (a) the lower rate shall be 20 per cent.;
  - (b) the basic rate shall be 24 per cent.; and
  - (c) the higher rate shall be 40 per cent.
- (2) For the year 1996-97 section 1(2) of the Taxes Act 1988 shall apply—
  - (a) as if the amount specified in paragraph (aa) (the lower rate limit) were £3,900; and
  - (b) as if the amount specified in paragraph (b) (the basic rate limit) were £25,500; and, accordingly, section 1(4) of that Act (indexation) shall not apply for the year 1996-97.
- (3) Section 559(4) of the Taxes Act 1988 (deductions from payments to sub-contractors in the construction industry) shall have effect—
  - (a) in relation to payments made on or after 1st July 1996 and before the appointed day (within the meaning of section 139 of the <sup>M51</sup>Finance Act 1995), with “24 per cent.” substituted for “ 25 per cent. ”; and
  - (b) in relation to payments made on or after that appointed day, as if the substitution for which section 139(1) of the <sup>M52</sup>Finance Act 1995 provided were a substitution of “ the relevant percentage ” for “ 24 per cent. ”

#### Marginal Citations

**M51** 1995 c. 4.

**M52** 1995 c. 4.

### 73 Application of lower rate to income from savings.

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

#### “1A Application of lower rate to income from savings and distributions.

- (1) Subject to sections 469(2) and 686, so much of any person’s total income for any year of assessment as—
  - (a) comprises income to which this section applies, and
  - (b) in the case of an individual, is not income falling within section 1(2) (b),

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shall, by virtue of this section, be charged for that year at the lower rate, instead of at the rate otherwise applicable to it in accordance with section 1(2)(aa) and (a).

- (2) Subject to subsection (4) below, this section applies to the following income—
    - (a) any income chargeable under Case III of Schedule D other than—
      - (i) relevant annuities and other annual payments that are not interest; and
      - (ii) amounts so chargeable by virtue of section 119 or 120;
    - (b) any income chargeable under Schedule F; and
    - (c) subject to subsection (4) below, any equivalent foreign income.
  - (3) The income which is equivalent foreign income for the purposes of this section is any income chargeable under Case IV or V of Schedule D which—
    - (a) is equivalent to a description of income falling within subsection (2) (a) above but arises from securities or other possessions out of the United Kingdom; or
    - (b) consists in any such dividend or other distribution of a company not resident in the United Kingdom as would be chargeable under Schedule F if the company were resident in the United Kingdom.
  - (4) This section does not apply to—
    - (a) any income chargeable to tax under Case IV or V of Schedule D which is such that section 65(5)(a) or (b) provides for the tax to be computed on the full amount of sums received in the United Kingdom; or
    - (b) any amounts deemed by virtue of section 695(4)(b) or 696(6) to be income chargeable under Case IV of Schedule D.
  - (5) So much of any person's income as comprises income to which this section applies shall be treated for the purposes of subsection (1)(b) above and any other provisions of the Income Tax Acts as the highest part of his income.
  - (6) Subsection (5) above shall have effect subject to section 833(3) but shall otherwise have effect notwithstanding any provision requiring income of any description to be treated for the purposes of the Income Tax Acts (other than section 550) as the highest part of a person's income.
  - (7) In this section "relevant annuity" means any annuity other than a purchased life annuity to which section 656 applies or to which that section would apply but for section 657(2)(a)."
- (2) In section 4 of that Act (construction of references to deduction of tax), after subsection (1) there shall be inserted the following subsection—
- “(1A) As respects deductions from, and tax treated as paid on, any such amounts as constitute or (but for the person whose income they are) would constitute income to which section 1A applies, subsection (1) above shall have effect with a reference to the lower rate in force for the relevant year of assessment substituted for the reference to the basic rate in force for that year.”
- (3) Subsection (1) above has effect in relation to the year 1996-97 and subsequent years of assessment and subsection (2) above has effect in relation to payments on or after 6th April 1996.

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- (4) Schedule 6 to this Act (which makes further amendments in connection with the charge at the lower rate on income from savings etc.) shall have effect.
- (5) Where any subordinate legislation (within the meaning of the <sup>M53</sup> Interpretation Act 1978) falls to be construed in accordance with section 4 of the Taxes Act 1988, that legislation (whenever it was made) shall be construed, in relation to payments on or after 6th April 1996, subject to subsection (1A) of that section.

#### **Marginal Citations**

**M53** 1978 c. 30.

#### **74 Personal allowances for 1996-97.**

- (1) For the year 1996-97 the amounts specified in the provisions mentioned in subsection (2) below shall be taken to be as set out in that subsection; and, accordingly, section 257C(1) of the Taxes Act 1988 (indexation), so far as it relates to the amounts so specified, shall not apply for the year 1996-97.
- (2) In section 257 of that Act (personal allowance)—
- (a) the amount in subsection (1) (basic allowance) shall be £3,765;
  - (b) the amount in subsection (2) (allowance for persons aged 65 or more but not aged 75 or more) shall be £4,910; and
  - (c) the amount in subsection (3) (allowance for persons aged 75 or more) shall be £5,090.

#### **75 Blind person's allowance.**

- (1) In section 265(1) of the Taxes Act 1988 (blind person's allowance), for “£1,200” there shall be substituted “£1,250”.
- (2) This section shall apply for the year 1996-97 and subsequent years of assessment.

#### **76 Limit on relief for interest.**

For the year 1996-97 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.

### *Corporation tax charge and rate*

#### **77 Charge and rate of corporation tax for 1996.**

Corporation tax shall be charged for the financial year 1996 at the rate of 33 per cent.

#### **78 Small companies.**

For the financial year 1996—

- (a) the small companies' rate shall be 24 per cent.; and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be nine four-hundredths.

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### *Abolition of Schedule C charge etc.*

## **79 Abolition of Schedule C charge etc.**

- (1) The charge to tax under Schedule C is abolished—
  - (a) for the purposes of income tax, for the year 1996-97 and subsequent years of assessment;
  - (b) for the purposes of corporation tax, for accounting periods ending after 31st March 1996.
- (2) Schedule 7 to this Act (which, together with Chapter II of this Part of this Act, makes provision for imposing a charge under Schedule D on descriptions of income previously charged under Schedule C, and makes connected amendments) shall have effect.

## **CHAPTER II**

### **LOAN RELATIONSHIPS**

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

- C5** Pt. IV Ch. II modified (29.4.1996) by 1986 c. 44, s. 60(3) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 4** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II modified (29.4.1996) by 1988 c. 1, s. 730A(6) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 37** (with savings in Pt. IV Ch. II) and as further substituted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by 2002 c. 23, s. 82(1), **Sch. 25 Pt. 2 para. 52(3)**)
- Pt. IV Ch. II modified (29.4.1996) by 1988 c. 1, s. 768B(10) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 39(1)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II modified (29.4.1996) by 1988 c. 1, s. 786C(9) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 40** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II modified (29.4.1996) by 1988 c. 35, s. 11(7) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 55** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II modified (29.4.1996) by 1988 c. 1, s. 477A(3)(a) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 28(1)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II modified (29.4.1996) by 1986 c. 31, s. 77(3) (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 3** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II modified (24.7.1996) by 1996 c. 55, s. 135, **Sch. 7 para. 11(2)**
- Pt. IV Ch. II modified (27.7.1999 with effect as mentioned in s. 100(2)(3) of 1999 c. 16) by 1988 c. 1, s. 494AA(5) (as inserted (27.7.1999 with effect as mentioned in s. 100(2)(3) of the amending Act) by 1999 c. 16, s. 100(1))
- Pt. IV Ch. II modified (15.1.2001) by 2000 c. 38, s. 250, **Sch. 26 paras. 7(2)**; S.I. 2000/3376, **art. 2**
- Pt. IV Ch. II modified (15.1.2001) by 2000 c. 38, s. 250, **Sch. 26 paras. 17(2)**; S.I. 2000/3376, **art. 2**
- Pt. IV Ch. II modified (15.1.2001) by 2000 c. 38, s. 250, **Sch. 26 paras. 29(2)**; S.I. 2000/3376, **art. 2**
- Pt. IV Ch. II modified (24.7.2002 with effect as mentioned in s. 71(2)(4) of the amending Act) by Finance Act 2002 (c. 23), s. 71(3)
- Pt. IV Ch. II modified (24.7.2002 with effect as mentioned in s. 79(3) of Finance Act 2002) by Income and Corporation Taxes Act 1988 (c.1), s. 494(2ZA) (as inserted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by Finance Act 2002 (c. 23), s. 79(2), **Sch. 23 Pt. 2 para. 17(7)** (with Sch. 23 para. 25))

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- Pt. IV Ch. II modified (24.7.2002 with effect as mentioned in s. 82(2) of Finance Act 2002) by **Income and Corporation Taxes Act 1988 (c.1), s. 730A(6B)** (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), s. 82(1), **Sch. 25 Pt. 2 para. 52(4)**)
- Pt. IV Ch. II modified (24.7.2002 with effect as mentioned in s. 82(2) of Finance Act 2002) by **Income and Corporation Taxes Act 1988 (c.1), s. 842(1AB)** (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), s. 82(1), **Sch. 25 Pt. 2 para. 56(4)**)
- Pt. IV Ch. II modified (24.7.2002) by Finance Act 2002 (c. 23), s. 82(1), **Sch. 25 Pt. 3 para. 64**
- Pt. IV Ch. II modified (24.7.2002 with effect as mentioned in s. 83(3)(4) of the amending Act) by Finance Act 2002 (c. 23), s. 83(1), **Sch. 26 Pt. 4 para. 19(4)**
- Pt. IV Ch. II modified (1.10.2002 with effect in relation to accounting periods beginning on or after that date) by **The Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002 (S.I. 2002/1970), regs. 1(2), 6, 7, 13**
- C6** Pt. IV Ch. II applied (29.4.1996) by 1988 c. 1, s. **434A(2A)** (as inserted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 23(2)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II applied (29.4.1996) by 1993 c. 34, s. **130(1)** (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 69** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II applied (29.4.1996) by 1994 c. 9, s. **160(2)** (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 75** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II applied (24.7.2002 with effect as mentioned in s. 82(2) of Finance Act 2002) by **Income and Corporation Taxes Act 1988 (c.1), s. 510A(6A)** (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), s. 82(1), **Sch. 25 Pt. 2 para. 49(4)**)
- C7** Pt. IV Ch. II restricted (29.4.1996) by 1988 c. 1, s. **475(2)(b)** (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 27(1)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II restricted (29.4.1996) by 1988 c. 1, s. **487(1)(b)** (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 31(1)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II restricted (29.4.1996) by 1988 c. 1, s. **487(3A)** (as inserted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 31(3)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II restricted (29.4.1996) by 1988 c. 1, s. **494(2)** (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 32(2)** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II restricted (24.7.2002 with effect as mentioned in s. 82(2) of Finance Act 2002) by **Income and Corporation Taxes Act 1988 (c.1), s. 582(3A)** (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), s. 82(1), **Sch. 25 Pt. 2 para. 50**)
- Pt. IV Ch. II restricted (24.7.2002 with effect as mentioned in s. 82(2) of Finance Act 2002) by **Income and Corporation Taxes Act 1988 (c.1), s. 787(1A)** (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), s. 82(1), **Sch. 25 Pt. 2 para. 53(2)**)
- Pt. IV Ch. II restricted (24.7.2002 with effect as mentioned in s. 83(3)(4) of the amending Act) by Finance Act 2002 (c. 23), s. 83(1), **Sch. 26 Pt. 9 para. 48(4)**
- C8** Pt. IV Ch. II excluded (29.4.1996) by 1988 c. 1, s. **56(4B)** (as inserted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 6** (with savings in Pt. IV Ch. II))
- Pt. IV Ch. II excluded (29.4.1996) by 1988 c. 1, s. **468L(5)** (as substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 26** (with savings in Pt. IV Ch. II))

### *Introductory provisions*

## **80 Taxation of loan relationships.**

- (1) For the purposes of corporation tax all profits and gains arising to a company from its loan relationships shall be chargeable to tax as income in accordance with this Chapter.
- (2) To the extent that a company is a party to a loan relationship for the purposes of a trade carried on by the company, profits and gains arising from the relationship shall be brought into account in computing the profits and gains of the trade.



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- (3) Profits and gains arising from a loan relationship of a company that are not brought into account under subsection (2) above shall be brought into account as profits and gains chargeable to tax under Case III of Schedule D.
- (4) This Chapter shall also have effect for the purposes of corporation tax for determining how any deficit on a company's loan relationships is to be brought into account in any case, including a case where none of the company's loan relationships falls by virtue of this Chapter to be regarded as a source of income.
- (5) Subject to any express provision to the contrary, the amounts which in the case of any company are brought into account in accordance with this Chapter as respects any matter shall be the only amounts brought into account for the purposes of corporation tax as respects that matter.

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

- C9** S. 80(5) excluded (29.4.1996) by 1988 c. 1, s. 400(9A) (as inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 19 (with savings in Pt. IV Ch. II))  
S. 80(5) excluded (29.4.1996) by 1988 c. 1, s. 795(4) (as inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 41 (with savings in Pt. IV Ch. II))  
S. 80(5) excluded (29.4.1996) by 1998 c. 1, s. 811(3) (as inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 47 (with savings in Pt. IV Ch. II))  
S. 80(5) excluded (29.4.1996) by 1988 c. 1, s. 116(16) (as inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 60(4) (with savings in Pt. IV Ch. II))  
S. 80(5) excluded (29.4.1996) by 1988 c. 1, s. 798(3A) (as inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 44(2) (with savings in Pt. IV Ch. II))

**81 Meaning of “loan relationship” etc.**

- (1) Subject to the following provisions of this section, a company has a loan relationship for the purposes of the Corporation Tax Acts wherever—
  - (a) the company stands (whether by reference to a security or otherwise) in the position of a creditor or debtor as respects any money debt; and
  - (b) that debt is one arising from a transaction for the lending of money;and references to a loan relationship and to a company's being a party to a loan relationship shall be construed accordingly.
- (2) For the purposes of this Chapter a money debt is a debt which falls to be settled—
  - (a) by the payment of money; or
  - (b) by the transfer of a right to settlement under a debt which is itself a money debt.
- (3) Subject to subsection (4) below, where an instrument is issued by any person for the purpose of representing security for, or the rights of a creditor in respect of, any money debt, then (whatever the circumstances of the issue of the instrument) that debt shall be taken for the purposes of this Chapter to be a debt arising from a transaction for the lending of money.
- (4) For the purposes of this Chapter a debt shall not be taken to arise from a transaction for the lending of money to the extent that it is a debt arising from rights conferred by shares in a company.

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- (5) For the purposes of this Chapter—
- (a) references to payments or interest under a loan relationship are references to payments or interest made or payable in pursuance of any of the rights or liabilities under that relationship; and
  - (b) references to rights or liabilities under a loan relationship are references to any of the rights or liabilities under the agreement or arrangements by virtue of which that relationship subsists;
- and those rights or liabilities shall be taken to include the rights or liabilities attached to any security which, being a security issued in relation to the money debt in question, is a security representing that relationship.
- (6) In this Chapter “money” includes money expressed in a currency other than sterling.

*Taxation of profits and gains and relief for deficits*

**82 Method of bringing amounts into account.**

- (1) For the purposes of corporation tax—
- (a) the profits and gains arising from the loan relationships of a company, and
  - (b) any deficit on a company’s loan relationships,
- shall be computed in accordance with this section using the credits and debits given for the accounting period in question by the following provisions of this Chapter.
- (2) To the extent that, in any accounting period, a loan relationship of a company is one to which it is a party for the purposes of a trade carried on by it, the credits and debits given in respect of that relationship for that period shall be treated (according to whether they are credits or debits) either—
- (a) as receipts of that trade falling to be brought into account in computing the profits and gains of that trade for that period; or
  - (b) as expenses of that trade which are deductible in computing those profits and gains.
- (3) Where for any accounting period there are, in respect of the loan relationships of a company, both—
- (a) credits that are not brought into account under subsection (2) above (“non-trading credits”), and
  - (b) debits that are not so brought into account (“non-trading debits”),
- the aggregate of the non-trading debits shall be subtracted from the aggregate of the non-trading credits to give the amount to be brought into account under subsection (4) below.
- (4) That amount is the amount which for any accounting period is to be taken (according to whether the aggregate of the non-trading credits or the aggregate of the non-trading debits is the greater) to be either—
- (a) the amount of the company’s profits and gains for that period that are chargeable under Case III of Schedule D as profits and gains arising from the company’s loan relationships; or
  - (b) the amount of the company’s non-trading deficit for that period on its loan relationships.

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- (5) Where for any accounting period a company has non-trading credits but no non-trading debits in respect of its loan relationships, the aggregate amount of the credits shall be the amount of the company's profits and gains for that period that are chargeable under Case III of Schedule D as profits and gains arising from those relationships.
- (6) Where for any accounting period a company has non-trading debits but no non-trading credits in respect of its loan relationships, that company shall have a non-trading deficit on its loan relationships for that period equal to the aggregate of the debits.
- (7) Subsection (2) above, so far as it provides for any amount to be deductible as mentioned in paragraph (b) of that subsection, shall have effect notwithstanding anything in section 74 of the Taxes Act 1988 (allowable deductions).

### 83 Non-trading deficit on loan relationships.

- (1) This section applies for the purposes of corporation tax where for any accounting period ("the deficit period") there is a non-trading deficit on a company's loan relationships.
- (2) The company may make a claim for the whole or any part of the deficit to be treated in any of the following ways, that is to say—
  - (a) to be set off against any profits of the company (of whatever description) for the deficit period;
  - (b) to be treated as eligible for group relief;
  - (c) to be carried back to be set off against profits for earlier accounting periods; or
  - (d) to be carried forward and set against non-trading profits for the next accounting period.
- [<sup>F18</sup>(3) So much of the deficit for the deficit period as is not the subject of a claim under subsection (2) above shall be carried forward and treated as a deficit for the next accounting period.
- <sup>F18</sup>(4) An amount carried forward to an accounting period under subsection (3) above—
  - (a) may be the subject of a claim under paragraph (d) of subsection (2) above, but not under any other paragraph of that subsection, and
  - (b) shall be disregarded for the purposes of any claim under that subsection relating to a deficit arising in that period.]
  - (5) No part of any non-trading deficit of a company established for charitable purposes only shall be set off against the profits of that or any other company in pursuance of a claim under subsection (2) above.
  - (6) A claim under subsection (2) above must be made within the period of two years immediately following the end of the relevant period, or within such further period as the Board may allow.
  - (7) In subsection (6) above "the relevant period"—
    - (a) in relation to a claim under subsection (2)(a), (b) or (c) above, means the deficit period; and
    - (b) in relation to a claim under subsection (2)(d) above, means the accounting period immediately following the deficit period.

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- (8) Different claims may be made under subsection (2) above as respects different parts of a non-trading deficit for any period, but no claim may be made as respects any part of a deficit to which another claim made under that subsection relates.
- (9) Schedule 8 to this Act (which makes provision about what happens where a claim is made under subsection (2) above) shall have effect.

#### Textual Amendments

**F18** S. 83(3)(4) substituted (retrospective to 29.4.1996) by 1998 c. 36, s. 82(1)(4)

*Computational provisions etc.*

#### 84 Debits and credits brought into account.

- (1) The credits and debits to be brought into account in the case of any company in respect of its loan relationships shall be the sums which, in accordance with an authorised accounting method and when taken together, fairly represent, for the accounting period in question—
- (a) all profits, gains and losses of the company, including those of a capital nature, which (disregarding interest and any charges or expenses) arise to the company from its loan relationships and related transactions; and
  - (b) all interest under the company's loan relationship and all charges and expenses incurred by the company under or for the purposes of its loan relationships and related transactions.
- (2) The reference in subsection (1) above to the profits, gains and losses arising to a company—
- (a) does not include a reference to any amounts required to be transferred to the company's share premium account; but
  - (b) does include a reference to any profits, gains or losses which, in accordance with normal accountancy practice, are carried to or sustained by any other reserve maintained by the company.
- (3) The reference in subsection (1)(b) above to charges and expenses incurred for the purposes of a company's loan relationships and related transactions does not include a reference to any charges or expenses other than those incurred directly—
- (a) in bringing any of those relationships into existence;
  - (b) in entering into or giving effect to any of those transactions;
  - (c) in making payments under any of those relationships or in pursuance of any of those transactions; or
  - (d) in taking steps for ensuring the receipt of payments under any of those relationships or in accordance with any of those transactions.
- (4) Where—
- (a) any charges or expenses are incurred by a company for purposes connected—
    - (i) with entering into a loan relationship or related transaction, or
    - (ii) with giving effect to any obligation that might arise under a loan relationship or related transaction,

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- (b) at the time when the charges or expenses are incurred, the relationship or transaction is one into which the company may enter but has not entered, and
- (c) if that relationship or transaction had been entered into by that company, the charges or expenses would be charges or expenses incurred as mentioned in subsection (3) above,

those charges or expenses shall be treated for the purposes of this Chapter as charges or expenses in relation to which debits may be brought into account in accordance with subsection (1)(b) above to the same extent as if the relationship or transaction had been entered into.

- (5) In this section “related transaction”, in relation to a loan relationship, means any disposal or acquisition (in whole or in part) of rights or liabilities under that relationship.
- (6) The cases where there shall be taken for the purposes of this section to be a disposal and acquisition of rights or liabilities under a loan relationship shall include those where such rights or liabilities are transferred or extinguished by any sale, gift, exchange, surrender, redemption or release.
- (7) This section has effect subject to Schedule 9 to this Act (which contains provision disallowing certain debits and credits for the purposes of this Chapter and making assumptions about how an authorised accounting method is to be applied in certain cases).

VALID FROM 24/07/2002

#### **[<sup>F19</sup>84A Exchange gains and losses from loan relationships**

- (1) The reference in section 84(1)(a) above to the profits, gains and losses arising to a company from its loan relationships and related transactions includes a reference to exchange gains and losses arising to the company from its loan relationships.
- (2) Subsection (1) above is subject to the following provisions of this section.
- (3) Subsection (1) above does not have effect in relation to—
  - (a) so much of an exchange gain or loss arising to a company in relation to an asset representing a loan relationship of the company as falls within subsection (4) below; or
  - (b) so much of an exchange gain or loss arising to a company in relation to a liability representing a loan relationship of the company as falls within subsection (5) below; or
  - (c) so much of any exchange gain or loss arising to a company as results from any translation from one currency to another pursuant to section 93A(4) of the Finance Act 1993 of the profit or loss of part of the company’s business and falls within subsection (4) below; or
  - (d) so much of an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company as falls within a description prescribed for the purpose in regulations made by the Treasury.
- (4) For the purposes of subsection (3)(a) or (c) above, an exchange gain or loss falls within this subsection to the extent that, in accordance with generally accepted

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accounting practice, an amount representing the whole or part of it is carried to or sustained by a reserve maintained by the company.

- (5) For the purposes of subsection (3)(b) above, an exchange gain or loss falls within this subsection to the extent that, in accordance with generally accepted accounting practice, an amount representing the whole or part of it—
- (a) is carried to or sustained by a reserve maintained by the company; and
  - (b) is set off by or against an amount falling within subsection (6) below.
- (6) An amount falls within this subsection if—
- (a) it represents the whole or part of an exchange gain or loss arising to the company in relation to any asset of the company; and
  - (b) in accordance with generally accepted accounting practice it is carried to or sustained by the reserve mentioned in subsection (5)(a) above.
- (7) Where by virtue of subsection (3) above subsection (1) above does not have effect in relation to an amount representing the whole or part of an exchange gain or loss, section 84(2)(b) above shall not have effect in relation to that amount (but this subsection is subject to regulations under subsection (8) below).
- (8) The Treasury may by regulations make provision for or in connection with bringing into account in prescribed circumstances amounts in relation to which subsection (3) above does not, by virtue of subsection (3) above, have effect.
- (9) The reference in subsection (8) above to bringing amounts into account is a reference to bringing amounts into account—
- (a) for the purposes of this Chapter, as credits or debits in respect of the loan relationships of the company concerned; or
  - (b) for the purposes of the Taxation of Chargeable Gains Act 1992.
- (10) Any power to make regulations under this section includes power to make different provision for different cases.]

#### Textual Amendments

- F19** S. 84A inserted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 79(2), [Sch. 23 paras. 3, 26\(5\)](#) (with [Sch. 23 para. 25](#))

## 85 Authorised accounting methods.

- (1) Subject to the following provisions of this Chapter, the alternative accounting methods that are authorised for the purposes of this Chapter are—
- (a) an accruals basis of accounting; and
  - (b) a mark to market basis of accounting under which any loan relationship to which that basis is applied is brought into account in each accounting period at a fair value.
- (2) An accounting method applied in any case shall be treated as authorised for the purposes of this Chapter only if—
- (a) it conforms (subject to paragraphs (b) and (c) below) to normal accountancy practice, as followed in cases where such practice allows the use of that method;

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- (b) it contains proper provision for allocating payments under a loan relationship to accounting periods; and
  - (c) where it is an accruals basis of accounting, it does not contain any provision (other than provision comprised in authorised arrangements for bad debt) that gives debits by reference to the valuation at different times of any asset representing a loan relationship.
- (3) In the case of an accruals basis of accounting, proper provision for allocating payments under a loan relationship to accounting periods is provision which—
- (a) allocates payments to the period to which they relate, without regard to the periods in which they are made or received or in which they become due and payable;
  - (b) includes provision which, where payments relate to two or more periods, apportions them on a just and reasonable basis between the different periods;
  - (c) assumes, subject to authorised arrangements for bad debt, that, so far as any company in the position of a creditor is concerned, every amount payable under the relationship will be paid in full as it becomes due;
  - (d) secures the making of the adjustments required in the case of the relationship by authorised arrangements for bad debt; and
  - (e) provides, subject to authorised arrangements for bad debt and for writing off government investments, that, where there is a release of any liability under the relationship, the appropriate amount in respect of the release is credited to the debtor in the accounting period in which the release takes place.
- (4) In the case of a mark to market basis of accounting, proper provision for allocating payments under a loan relationship to accounting periods is provision which allocates payments to the accounting period in which they become due and payable.
- (5) In this section—
- (a) the references to authorised arrangements for bad debt are references to accounting arrangements under which debits and credits are brought into account in conformity with the provisions of paragraph 5 of Schedule 9 to this Act; and
  - (b) the reference to authorised arrangements for writing off government investments is a reference to accounting arrangements that give effect to paragraph 7 of that Schedule.
- (6) In this section “fair value”, in relation to any loan relationship of a company, means the amount which, at the time as at which the value falls to be determined, is the amount that the company would obtain from or, as the case may be, would have to pay to an independent person for—
- (a) the transfer of all the company’s rights under the relationship in respect of amounts which at that time are not yet due and payable; and
  - (b) the release of all the company’s liabilities under the relationship in respect of amounts which at that time are not yet due and payable.

## 86 Application of accounting methods.

- (1) This section has effect, subject to the following provisions of this Chapter, for the determination of which of the alternative authorised accounting methods that are available by virtue of section 85 above is to be used as respects the loan relationships of a company.

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- (2) Different methods may be used as respects different relationships or, as respects the same relationship, for different accounting periods or for different parts of the same accounting period.
- (3) If a basis of accounting which is or equates with an authorised accounting method is used as respects any loan relationship of a company in a company's statutory accounts, then the method which is to be used for the purposes of this Chapter as respects that relationship for the accounting period, or part of a period, for which that basis is used in those accounts shall be—
  - (a) where the basis used in those accounts is an authorised accounting method, that method; and
  - (b) where it is not, the authorised accounting method with which it equates.
- (4) For any period or part of a period for which the authorised accounting method to be used as respects a loan relationship of a company is not determined under subsection (3) above, an authorised accruals basis of accounting shall be used for the purposes of this Chapter as respects that loan relationship.
- (5) For the purposes of this section (but subject to subsection (6) below)—
  - (a) a basis of accounting equates with an authorised accruals basis of accounting if it purports to allocate payments under a loan relationship to accounting periods according to when they are taken to accrue; and
  - (b) a basis of accounting equates with an authorised mark to market basis of accounting if (without equating with an authorised accruals basis of accounting) it purports in respect of a loan relationship—
    - (i) to produce credits or debits computed by reference to the determination, as at different times in an accounting period, of a fair value; and
    - (ii) to produce credits or debits relating to payments under that relationship according to when they become due and payable.
- (6) An accounting method which purports to make any such allocation of payments under a loan relationship as is mentioned in subsection (5)(a) above shall be taken for the purposes of this section to equate with an authorised mark to market basis of accounting (rather than with an authorised accruals basis of accounting) if—
  - (a) it purports to bring that relationship into account in each accounting period at a value which would be a fair value if the valuation were made on the basis that interest under the relationship were to be disregarded to the extent that it has already accrued; and
  - (b) the credits and debits produced in the case of that relationship by that method (when it is properly applied) correspond, for all practical purposes, to the credits and debits produced in the case of that relationship, and for the same accounting period, by an authorised mark to market basis of accounting.
- (7) In this section “fair value” has the same meaning as in section 85 above.
- (8) In this section “statutory accounts”, in relation to a company, means—
  - (a) any accounts relating to that company that are drawn up in accordance with any requirements of the <sup>M54</sup>Companies Act 1985 or the <sup>M55</sup>Companies (Northern Ireland) Order 1986 that apply in relation to that company;



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- (b) any accounts relating to that company that are drawn up in accordance with any requirements of regulations under section 70 of the <sup>M56</sup>Friendly Societies Act 1992 that apply in relation to that company;
  - (c) any accounts relating to that company which are accounts to which Part I of Schedule 21C to the <sup>M57</sup>Companies Act 1985 or Part I of Schedule 21D to that Act (companies with UK branches) applies;
  - (d) in the case of a company which—
    - (i) is not subject to any such requirements as are mentioned in paragraphs (a) or (b) above, and
    - (ii) is a company in whose case there are no accounts for the period in question that fall within paragraph (c) above,any accounts relating to the company drawn up in accordance with requirements imposed in relation to that company under the law of its home State; and
  - (e) in the case of a company which—
    - (i) is not subject to any such requirements as are mentioned in paragraphs (a), (b) or (d) above, and
    - (ii) is a company in whose case there are no accounts for the period in question that fall within paragraph (c) above,the accounts relating to the company that most closely correspond to the accounts which, in the case of a company formed and registered under the Companies Act 1985, are required under that Act.
- (9) For the purposes of subsection (8) above the home State of a company is the country or territory under whose law the company is incorporated.

#### Marginal Citations

- M54** 1985 c. 6.
- M55** S.I. 1986/1032 (N.I.6).
- M56** 1992 c. 40.
- M57** 1985 c. 6.

### 87 Accounting method where parties have a connection.

- (1) This section applies in the case of a loan relationship of a company where for any accounting period there is a connection between the company and—
  - (a) in the case of a debtor relationship of the company, a person standing in the position of a creditor as respects the debt in question; or
  - (b) in the case of a creditor relationship of the company, a person standing in the position of a debtor as respects that debt.
- (2) The only accounting method authorised for the purposes of this Chapter for use by the company as respects the loan relationship shall be an authorised accruals basis of accounting.
- (3) For the purposes of this section there is a connection between a company and another person for an accounting period if (subject to subsection (4) and section 88 below)—

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- (a) the other person is a company and there is a time in that period, or in the two years before the beginning of that period, when one of the companies has had control of the other;
  - (b) the other person is a company and there is a time in that period, or in those two years, when both the companies have been under the control of the same person; or
  - (c) there is a time in that accounting period, or in those two years, when the company was a close company and the other person was a participator in that company or the associate of a person who was such a participator at that time.
- (4) Two companies which have at any time been under the control of the same person shall not, by virtue of that fact, be taken for the purposes of this section to be companies between whom there is a connection if the person was the Crown, a Minister of the Crown, a government department, a Northern Ireland department, a foreign sovereign power or an international organisation.
- (5) The references in subsection (1) above to a person who stands in the position of a creditor or debtor as respects a loan relationship include references to a person who indirectly stands in that position by reference to a series of loan relationships.
- (6) Subsections (2) to (6) of section 416 of the Taxes Act 1988 (meaning of “control”) shall apply for the purposes of this section as they apply for the purposes of Part XI of that Act.
- (7) Subject to subsection (8) below, in this section “participator” and “associate” have the meanings given for the purposes of Part XI of the Taxes Act 1988 by section 417 of that Act.
- (8) A person shall not for the purposes of this section be regarded as a participator in relation to a company by reason only that he is a loan creditor of the company.

VALID FROM 24/07/2002

**[<sup>F20</sup>87A Meaning of “control” in section 87**

- (1) For the purposes of section 87 above, “control”, in relation to a company, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with his wishes.
- (2) There shall be left out of account for the purposes of this section—
- (a) any shares held by a company, and
  - (b) any voting power or other powers arising from shares held by a company,
- if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988, assets of an insurance company’s long-term insurance fund (see section 431(2) of that Act).

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- (3) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this section, as respects any time in an accounting period of the partnership, as if—
- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
  - (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section,
- but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.]

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#### Textual Amendments

**F20** S. 87A inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), s. 82(1), Sch. 25 Pt. 1 para. 8

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

**C10** S. 87A applied (with modifications) (24.7.2002 with effect as mentioned in s. 83(3)(4) of the amending Act) by Finance Act 2002 (c. 23), s. 83(1), Sch. 26 Pt. 2 paras. 6(9), 7(8) (with Sch. 26 Pt. 2 para. 10(2))  
S. 87A applied (with modifications) (24.7.2002 with effect as mentioned in s. 83(3)(4) of the amending Act) by Finance Act 2002 (c. 23), s. 83(1), Sch. 26 Pt. 6 para. 26(6)

## 88 Exemption from section 87 in certain cases.

- (1) Subject to subsection (5) below, where a creditor relationship of a company is one to which that company is a party in any accounting period in exempt circumstances, any connection for that accounting period between the company and a person who stands in the position of a debtor as respects the debt shall be disregarded for the purposes of section 87 above.
- (2) A company having a creditor relationship in any accounting period shall, for that period, be taken for the purposes of this section to be a party to that relationship in exempt circumstances if—
  - (a) the company, in the course of carrying on any activities forming an integral part of a trade carried on by that company in that period, disposes of or acquires assets representing creditor relationships;
  - (b) that period is one for which the company uses an authorised mark to market basis of accounting as respects all the creditor relationships represented by assets acquired in the course of those activities;
  - (c) the asset representing the creditor relationship in question was acquired in the course of those activities;
  - (d) that asset is either—
    - (i) listed on a recognised stock exchange at the end of that period; or

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- (ii) a security the redemption of which must occur within twelve months of its issue;
  - (e) there is a time in that period when assets of the same kind as the asset representing the loan relationship in question are in the beneficial ownership of persons other than the company; and
  - (f) there is not more than three months, in aggregate, in that accounting period during which the equivalent of 30 per cent. or more of the assets of that kind is in the beneficial ownership of connected persons.
- (3) An insurance company carrying on basic life assurance and general annuity business and having a creditor relationship in any accounting period shall, for that period, be taken for the purposes of this section to be a party to that relationship in exempt circumstances if—
- (a) assets of the company representing any of its creditor relationships are linked for that period to its basic life assurance and general annuity business;
  - (b) that period is one for which the company uses an authorised mark to market basis of accounting as respects all the creditor relationships of the company represented by assets that are so linked;
  - (c) the asset representing the creditor relationship in question is so linked;
  - (d) that asset is either—
    - (i) listed on a recognised stock exchange at the end of that period; or
    - (ii) a security the redemption of which must occur within twelve months of its issue;
  - (e) there is a time in that period when assets of the same kind as the asset representing the creditor relationship in question are in the beneficial ownership of persons other than the company; and
  - (f) there is not more than three months, in aggregate, in that accounting period during which the equivalent of 30 per cent. or more of the assets of that kind is in the beneficial ownership of connected persons.
- (4) For the purposes of subsections (2) and (3) above—
- (a) assets shall be taken to be of the same kind where they are treated as being of the same kind by the practice of any recognised stock exchange, or would be so treated if dealt with on such a stock exchange; and
  - (b) a connected person has the beneficial ownership of an asset wherever there is, or (apart from this section) would be, a connection (within the meaning of section 87 above) between—
    - (i) the person who has the beneficial ownership of the asset, and
    - (ii) a person who stands in the position of a debtor as respects the money debt by reference to which any loan relationship represented by that asset subsists.
- (5) Where for any accounting period—
- (a) subsection (1) above has effect in the case of a creditor relationship of a company, and
  - (b) the person who stands in the position of a debtor as respects the debt in question is also a company,
- that subsection shall not apply for determining, for the purposes of so much of section 87 above as relates to the corresponding debtor relationship, whether there is a connection between the two companies.

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- (6) Subsection (5) of section 87 above shall apply for the purposes of this section as it applies for the purposes of that section.
- (7) In this section “basic life assurance and general annuity business” and “insurance company” have the same meanings as in Chapter I of Part XII of the Taxes Act 1988, and section 432ZA of that Act (linked assets) shall apply for the purposes of this section as it applies for the purposes of that Chapter.

VALID FROM 24/07/2002

**[<sup>F21</sup> 88A Accounting method where rate of interest is reset**

- (1) This section applies where—
- (a) the conditions in subsections (2) and (3) below are satisfied in relation to an asset representing a creditor relationship of a company; and
  - (b) the object, or one of the main objects, of the company entering into or becoming a party to the creditor relationship was the securing, whether for itself or any other person, of a tax advantage (within the meaning of Chapter 1 of Part 17 of the Taxes Act 1988).
- (2) The first condition is that there is or has at any time been a change in—
- (a) the rate of interest payable in the case of the asset;
  - (b) the amount payable to discharge the debt; or
  - (c) the time at which any payments under the asset (whether of interest or otherwise) fall due.
- (3) The second condition is that the difference between—
- (a) the fair value of the asset immediately after the change, and
  - (b) the issue price of the asset,
- is equal to at least 5 per cent of the issue price of the asset.
- (4) On and after the day on which the conditions in subsections (2) and (3) above become satisfied in the case of an asset, the only accounting method authorised for the purposes of this Chapter for use by any company as respects a creditor relationship represented by the asset shall be an authorised mark to market basis of accounting.
- (5) Where section 90 below applies in consequence of subsection (4) above, no debit shall be brought into account under subsection (2)(c) or (3)(b) of that section.
- (6) In determining the fair value of an asset for any purpose of this section it shall be assumed that all amounts payable by the debtor will be paid in full as they fall due.]

**Textual Amendments**

**F21** S. 88A inserted (24.7.2002 with effect as mentioned in s. 71(2)(4) of the amending Act) by Finance Act 2002 (c. 23), s. 71(1)

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## **89 Inconsistent application of accounting methods.**

- (1) Where there is any inconsistency or other material difference between the way in which any authorised accounting method is applied as respects the same loan relationship in successive accounting periods, a balancing credit or balancing debit shall be brought into account in the second of those periods (“the second period”).
- (2) The amount of the balancing credit or debit shall be computed as respects the relationship in question by—
  - (a) taking the amount given by subsection (3) below and the amount given by subsection (4) below; and
  - (b) then aggregating those amounts (treating any debit as a negative amount) to produce a net credit or net debit.
- (3) The amount given by this subsection is whichever of the following is applicable—
  - (a) a debit equal to the amount (if any) by which the first of the following amounts exceeds the second, that is to say—
    - (i) the aggregate of the credits actually brought into account for all previous periods in which the accounting method was used; and
    - (ii) the aggregate of the credits that would have been brought into account if that method had been applied in those periods in the same way as it was applied in the second period;
  - (b) a credit equal to the amount (if any) by which the second aggregate mentioned in paragraph (a) above exceeds the first; or
  - (c) if both those aggregates are the same, nil.
- (4) The amount given by this subsection is whichever of the following is applicable—
  - (a) a credit equal to the amount (if any) by which the first of the following amounts exceeds the second, that is to say—
    - (i) the aggregate of the debits actually brought into account for all previous periods in which the accounting method was used; and
    - (ii) the aggregate of the debits that would have been brought into account if that method had been applied in those periods in the same way as it was applied in the second period;
  - (b) a debit equal to the amount (if any) by which the second aggregate mentioned in paragraph (a) above exceeds the first; or
  - (c) if both those aggregates are the same, nil.
- (5) In this section “previous period” means any accounting period before the second period.

## **90 Changes of accounting method.**

- (1) This section applies where different authorised accounting methods are used for the purposes of this Chapter as respects the same loan relationship for different parts of the same accounting period or for successive accounting periods.
- (2) Where, in the case of any loan relationship, the use of any authorised accounting method is superseded in the course of any accounting period by the use of another—
  - (a) the assumptions specified in subsection (4) below shall be made;
  - (b) each method shall be applied on those assumptions as respects the part of the period for which it is used; and

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- (c) the credits and debits given by the application of those methods on those assumptions shall be brought into account in the accounting period in which the change of method takes effect.
- (3) Where, in the case of any loan relationship, the use of any authorised accounting method is superseded as from the beginning of an accounting period by the use of another—
- (a) a net credit or debit shall be computed (treating any debit used in the computation as a negative amount) by—
    - (i) aggregating the credits and debits which, on the assumptions specified in subsection (4) below, would have been given in respect of that relationship for the successive accounting periods by the use for each period of the accounting method actually used for that period;
    - (ii) aggregating the credits and debits so given without the making of those assumptions; and
    - (iii) subtracting the second aggregate from the first;and
  - (b) the net credit or debit shall be brought into account for the purposes of this Chapter in the accounting period as from the beginning of which the change of method takes effect.
- (4) The assumptions mentioned in subsections (2) and (3) above are—
- (a) that the company ceased to be a party to the relationship immediately before the end of the period, or part of a period, for which the superseded method is used;
  - (b) that the company again became a party to that relationship as from the beginning of the period or, as the case may be, part of a period for which the other authorised accounting method is used;
  - (c) that the relationship to which the company is deemed to have become a party is separate and distinct from the one to which it is deemed to have ceased to be a party;
  - (d) that the amount payable under the transaction comprised in each of the assumptions specified in paragraphs (a) and (b) above was equal to the fair value of the relationship; and
  - (e) so far as relevant, that that amount became due at the time when the company is deemed to have ceased to be a party to the relationship or, as the case may be, to have again become a party to it.
- (5) Where—
- (a) a mark to market basis of accounting is superseded by an accruals basis of accounting in the case of any loan relationship, and
  - (b) the amount which would have accrued in respect of that relationship in the period or part of a period for which the accruals basis of accounting is used falls to be determined for the purposes of this section in accordance with the assumptions mentioned in subsection (4) above,
- that amount shall be taken for those purposes to be equal to the amount resulting from the subtraction of the amount given by subsection (6)(a) below from the amount given by subsection (6)(b) below.
- (6) Those amounts are—

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- (a) the amount which by virtue of the assumptions mentioned in subsection (4) above is given as an opening value for the period or part of a period; and
  - (b) the amount equal to whatever, in the computation in accordance with an authorised accruals basis of accounting of the amount accruing in that period or part of a period, would have been taken to be the closing value applicable as at the end of that period or part of a period if such a basis of accounting had always been used as respects the relationship.
- (7) In this section “fair value” has the same meaning as in section 85 above.

## **91 Payments subject to deduction of tax.**

- (1) This section applies where—
- (a) any company receives a payment of interest on which it bears income tax by deduction; and
  - (b) in the case of that company, a credit relating to that interest has been brought into account for the purposes of this Chapter for an accounting period ending more than two years before the receipt of the payment.
- (2) On a claim made by the company to an officer of the Board, section 7(2) or, as the case may be, 11(3) of the Taxes Act 1988 (deducted income tax to be set against liability to corporation tax) shall have effect in relation to the income tax on the payment as if the interest had fallen to be taken into account for the purposes of corporation tax in the accounting period in which the payment of that interest is received.
- (3) In determining for the purposes of this section which accounting period is the accounting period for which a credit relating to interest paid subsequently was brought into account, every payment of interest to a company under a loan relationship of that company shall be assumed to be a payment in discharge of the earliest outstanding liability to that company in respect of interest payable under the relationship.
- (4) For the purposes of this section, the earliest outstanding liability to interest payable under a loan relationship of a company shall be identified, in relation to any payment of such interest, according to the authorised accounting method most recently used as respects that relationship, so that—
- (a) if that method is an authorised accruals basis of accounting, it shall be determined by reference to the time when the interest accrued; and
  - (b) if that method is an authorised mark to market basis of accounting, it shall be determined by reference to the time when the interest became due and payable.
- (5) In subsection (4) above the reference, in relation to a payment of interest made to a company in any accounting period, to the authorised accounting method most recently used as respects that relationship is a reference to the authorised accounting method which, in the case of that company, has been used as respects that relationship for the accounting period which, when the payment is made, is the most recent for which amounts in respect of that relationship have been brought into account for the purposes of this Chapter.
- (6) A claim under this section shall not be made in respect of any payment of interest at any time after the later of the following, that is to say—
- (a) the time two years after the end of the accounting period in which the payment is received; and



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- (b) the time six years after the end of the accounting period for which the credit in respect of the interest was brought into account for the purposes of this Chapter.
- (7) Where—
- (a) there is a payment of interest to a company under a loan relationship of that company, and
  - (b) the company is prevented by virtue of subsection (6) above from making any claim under this section in respect of that payment,
- the company shall not be entitled to make any claim under paragraph 5 of Schedule 16 to the Taxes Act 1988 (set off of income tax borne against income tax payable) in respect of that payment.

### *Special cases*

## **92 Convertible securities etc.**

- (1) This section applies to an asset if—
- (a) the asset represents a creditor relationship of a company;
  - (b) the rights attached to the asset include provision by virtue of which the company is or may become entitled to acquire (whether by conversion or exchange or otherwise) any shares in a company;
  - (c) the extent to which shares may be acquired under that provision is not determined using a cash value which is specified in that provision or which is or will be ascertainable by reference to the terms of that provision;
  - (d) the asset is not a relevant discounted security within the meaning of Schedule 13 to this Act;
  - (e) at the time when the asset came into existence there was a more than negligible likelihood that the right to acquire shares in a company would in due course be exercised to a significant extent; and
  - (f) the asset is not one the disposal of which by the company would fall to be treated as a disposal in the course of activities forming an integral part of a trade carried on by the company.
- (2) The amounts falling for any accounting period to be brought into account for the purposes of this Chapter in respect of a creditor relationship represented by an asset to which this section applies shall be confined to amounts relating to interest.
- (3) Only an authorised accruals basis of accounting shall be used for ascertaining those amounts.
- (4) Amounts shall be brought into account in computing the profits of the company for the purposes of corporation tax as if the <sup>M58</sup>Taxation of Chargeable Gains Act 1992 had effect in relation to any asset to which this section applies as it has effect in relation to an asset that does not represent a loan relationship.
- (5) For the purposes of that Act the amount or value of the consideration for any disposal or acquisition of the asset shall be treated as adjusted so as to exclude so much of it as, on a just and reasonable apportionment, relates to any interest which—
- (a) falls to be brought into account under subsections (2) and (3) above as accruing to any company at any time; and

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- (b) in consequence of, or of the terms of, the disposal or acquisition, is not paid or payable to the company to which it is treated for the purposes of this Chapter as accruing.
- (6) In subsection (5) above the references to a disposal, in relation to an asset, are references to anything which—
- (a) is a disposal of that asset (within the meaning of the Taxation of Chargeable Gains Act 1992); or
  - (b) would be such a disposal but for section 127 or 116(10) of that Act (reorganisations etc.);
- and the references to the acquisition of an asset shall be construed accordingly.

#### Marginal Citations

M58 1992 c. 12.

VALID FROM 24/07/2002

#### [<sup>F22</sup>92A Convertible securities etc: debtor relationships

- (1) This section applies to a liability if—
- (a) the liability represents a debtor relationship of a company (“the debtor company”); and
  - (b) the rights attached to the asset that represents the corresponding creditor relationship include provision by virtue of which a person is or may become entitled to acquire (whether by conversion or exchange or otherwise)—
    - (i) any shares in the debtor company, or
    - (ii) any shares in another company.
- (2) The debits falling for any accounting period to be brought into account for the purposes of this Chapter in respect of a debtor relationship represented by a liability to which this section applies shall not include debits in relation to any of the amounts falling within subsection (3) below.
- (3) The amounts are—
- (a) any amounts payable by the debtor company in respect of, or in connection with, any such acquisition of shares as is described in subsection (1)(b)(ii) above, but not any amounts to which subsection (4) below applies; and
  - (b) any charges or expenses incurred by the debtor company as described in paragraph (b), (c) or (d) of section 84(3) above, where the related transaction in question relates to, or is connected with, the acquisition of shares by another person (whether by conversion or exchange or otherwise) as described in subsection (1)(b) above.
- (4) This subsection applies to amounts payable by the debtor company, as described in subsection (3)(a) above, in respect of the debtor relationship in a case where—
- (a) the debtor company is carrying on a banking business or a business consisting wholly or partly in dealing in securities, and
  - (b) it entered into the debtor relationship in the ordinary course of that business.

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- (5) For the purposes of subsection (4) above “securities” has the same meaning as in section 473 of the Taxes Act.
- (6) Subject to subsection (7) below, only an authorised accruals basis of accounting shall be used for ascertaining the amounts which fall to be taken into account as described in subsection (2) above.
- (7) The requirement in subsection (6) above to use an authorised accruals basis of accounting does not apply in the case of a debtor relationship where—
  - (a) the debtor company is carrying on a banking business or a business consisting wholly or partly in dealing in securities, and
  - (b) it entered into the debtor relationship in the ordinary course of that business.]

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#### Textual Amendments

**F22** S. 92A inserted (24.7.2002 with effect as mentioned in s. 74(2) of the amending Act) by Finance Act 2002 (c. 23), s. 74(1)

### 93 Relationships linked to the value of chargeable assets.

- (1) This section applies in the case of any loan relationship of a company that is linked to the value of chargeable assets unless it is one the disposal of which by the company would fall to be treated as a disposal in the course of activities forming an integral part of a trade carried on by the company.
- (2) The amounts falling for any accounting period to be brought into account for the purposes of this Chapter in respect of the relationship shall be confined to amounts relating to interest.
- (3) Only an authorised accruals basis of accounting shall be used for ascertaining those amounts.
- (4) Amounts shall be brought into account in computing the profits of the company for the purposes of corporation tax as if the <sup>M59</sup>Taxation of Chargeable Gains Act 1992 had effect in relation to the asset representing the relationship as it has effect in relation to an asset that does not represent a loan relationship.
- (5) For the purposes of that Act the amount or value of the consideration for any disposal or acquisition of the asset shall be treated as adjusted so as to exclude so much of it as, on a just and reasonable apportionment, relates to any interest which—
  - (a) falls to be brought into account under subsections (2) and (3) above as accruing to any company at any time; and
  - (b) in consequence of, or of the terms of, the disposal or acquisition, is not paid or payable to the company to which it is treated for the purposes of this Chapter as accruing.
- (6) For the purposes of this section a loan relationship is linked to the value of chargeable assets if, in pursuance of any provision having effect for the purposes of that relationship, the amount that must be paid to discharge the money debt (whether on redemption of a security issued in relation to that debt or otherwise) is equal to the amount determined by applying a relevant percentage change in the value of

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chargeable assets to the amount falling for the purposes of this Chapter to be regarded as the amount of the original loan from which the money debt arises.

- (7) In subsection (6) above the reference to a relevant percentage change in the value of chargeable assets is a reference to the amount of the percentage change (if any) over the relevant period in the value of chargeable assets of any particular description or in any index of the value of any such assets.
- (8) In subsection (7) above “the relevant period” means—
- (a) the period between the time of the original loan and the discharge of the money debt; or
  - (b) any other period in which almost all of that period is comprised and which differs from that period exclusively for purposes connected with giving effect to a valuation in relation to rights or liabilities under the loan relationship.
- (9) If—
- (a) there is a provision which, in the case of any loan relationship, falls within subsection (6) above,
  - (b) that provision is made subject to any other provision applying to the determination of the amount payable to discharge the money debt,
  - (c) that other provision is to the effect only that the amount so payable must not be less than a specified percentage of the amount falling for the purposes of this Chapter to be regarded as the amount of the original loan, and
  - (d) the specified percentage is not more than 10 per cent.,
- that other provision shall be disregarded in determining for the purposes of this section whether the relationship is linked to the value of chargeable assets.
- (10) For the purposes of this section an asset is a chargeable asset, in relation to a loan relationship of a company, if any gain accruing on the disposal of the asset by the company on or after 1st April 1996 would, on the assumptions specified in subsection (11) below, be a chargeable gain for the purposes of the <sup>M60</sup>Taxation of Chargeable Gains Act 1992.
- (11) Those assumptions are—
- (a) where it is not otherwise the case, that the asset is an asset of the company;
  - (b) that the asset is not one the disposal of which by the company would fall to be treated for the purposes of corporation tax as a disposal in the course of a trade carried on by the company; and
  - (c) that chargeable gains that might accrue under section 116(10) of that Act (postponed charges) are to be disregarded.
- (12) In subsection (5) above references to a disposal, in relation to an asset, are references to anything which—
- (a) is a disposal of that asset (within the meaning of the Taxation of Chargeable Gains Act 1992); or
  - (b) would be such a disposal but for section 127 or 116(10) of that Act (reorganisations etc.);
- and the references to the acquisition of an asset shall be construed accordingly.
- (13) For the purposes of this section neither—
- (a) the retail prices index, nor

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- (b) any similar general index of prices published by the government of any territory or by the agent of any such government,  
shall be taken to be an index of the value of chargeable assets.

#### Marginal Citations

- M59 1992 c. 12.  
M60 1992 c. 12.

VALID FROM 24/07/2002

#### **[<sup>F23</sup>93A Relationships linked to the value of chargeable assets: guaranteed returns**

- (1) This section applies to a loan relationship which is a creditor relationship of a company if—
- (a) that loan relationship and one or more other transactions are associated transactions designed to produce a guaranteed return;
  - (b) any such other transaction is a disposal of futures or options; and
  - (c) the guaranteed return comprises the return consisting of the amount that must be paid to discharge the money debt arising in connection with that loan relationship taken together with the return from any one or more of the disposals of futures or options.
- (2) For the purposes of this section a loan relationship of a company and one or more disposals of futures or options are transactions designed to produce a guaranteed return if, taking the transactions together, it would be reasonable to assume, from considering—
- (a) the likely effect of the transactions,
  - (b) the circumstances in which the transactions are entered into, or in which any of them is entered into, or
  - (c) the matters in both of paragraphs (a) and (b),
- that the main purpose of the transactions, or one of their main purposes, is or was the production of a guaranteed return from the loan relationship and any one or more of the disposals.
- (3) For the purposes of this section a guaranteed return is produced from the loan relationship and any one or more of the disposals of futures or options wherever (taking all the transactions together) risks from fluctuations in the underlying subject matter are so eliminated or reduced as to produce a return from the transactions—
- (a) the amount of which is not, to any significant extent, attributable (otherwise than incidentally) to any such fluctuations; and
  - (b) which equates, in substance, to the return on an investment of money at interest.
- (4) For the purposes of subsection (3) above the cases where risks from fluctuations in the underlying subject matter are eliminated or reduced shall be deemed to include any case where the main reason, or one of the main reasons, for the choice of that subject matter is—
- (a) that there appears to be no risk that that subject matter will fluctuate; or

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(b) that the risk that it will fluctuate appears to be insignificant.

(5) In this section—

- (a) the references, in relation to a loan relationship, to the underlying subject matter are references to the value of chargeable assets of a particular description to which that relationship is linked;
- (b) the references, in relation to a disposal of futures or options, to the underlying subject matter are references to or to the value of the commodities, currencies, shares, stock or securities, interest rates, indices or other matters to which, or to the value of which, those futures or options are referable.

(6) Subsection (5)(a) above is to be construed in accordance with section 93 above.

(7) For the purposes of this section—

- (a) references to the disposal of futures or options are to be construed in accordance with paragraphs 4 and 4A of Schedule 5AA to the Taxes Act 1988;
- (b) references to the return from one or more disposals of futures or options are to be construed in accordance with paragraph 5 of that Schedule; and
- (c) references to associated transactions are to be construed in accordance with paragraph 6 of that Schedule.]

#### Textual Amendments

**F23** S. 93A inserted (24.7.2002 with effect as mentioned in s. 76(2) of the amending Act) by Finance Act 2002 (c. 23), s. 76(1)

VALID FROM 24/07/2002

#### [<sup>F24</sup>93B Loan relationships ceasing to be within section 93

- (1) Where a loan relationship of a company—
  - (a) ceases at any time to be a loan relationship to which section 93 above applies, but
  - (b) does not cease at that time to be a loan relationship of that company, subsection (2) below shall have effect in relation to the asset representing that relationship.
- (2) Where this subsection has effect in relation to an asset representing a loan relationship of a company, the company shall be deemed for the purposes of the Taxation of Chargeable Gains Act 1992 and this Chapter—
  - (a) to have disposed of the asset for the relevant consideration immediately before the time when the loan relationship ceases to be one to which section 93 above applies, and
  - (b) to have re-acquired it for the relevant consideration immediately after that time.
- (3) Any deemed disposal and re-acquisition of an asset under subsection (2) above shall be treated for the purposes of the Taxation of Chargeable Gains Act 1992 as a transaction in the case of which—

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- (a) sections 127 to 130 of that Act would apply, apart from the provisions of section 116 of that Act, by virtue of any provision of Chapter 2 of Part 4 of that Act;
  - (b) the asset in question represents both the original shares and the new holding for the purposes of those sections;
  - (c) the market value of the asset at the time of the transaction is an amount equal to the relevant consideration.
- (4) Subject to subsection (5) below, in subsections (2) and (3) above “the relevant consideration”, in relation to an asset, means the amount that would have been taken, in accordance with the relevant accounting method, to be the value of the asset at the time of its deemed disposal if that method had been applied to the asset for tax purposes at all times until then.
- (5) Section 93(5) above shall not apply in the case of a deemed disposal and re-acquisition under subsection (2) above; but the amount of the relevant consideration in such a case shall be treated for the purposes of the Taxation of Chargeable Gains Act 1992 as reduced by so much (if any) of the amount mentioned in subsection (4) above as is referable to interest which—
- (a) is not paid or payable to the company before the time of the deemed disposal; but
  - (b) is interest falling to be brought into account under section 93(2) and (3) above as having accrued before that time.
- (6) In subsection (4) above “the relevant accounting method”, in relation to an asset representing a loan relationship of a company, means the accounting method which, for the accounting period of that company in which the deemed re-acquisition takes place, is used as respects that asset and the part of that accounting period beginning with the deemed re-acquisition.
- (7) This section shall be construed as one with section 93 above.]

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#### Textual Amendments

**F24** [S. 93B](#) inserted (24.7.2002 with effect as mentioned in [s. 77\(2\)\(3\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 77\(1\)](#)

## 94 Indexed gilt-edged securities.

- (1) In the case of any loan relationship represented by an index-linked gilt-edged security, the adjustment for which this section provides shall be made in computing the credits and debits which fall, for any accounting period, to be brought into account for the purposes of this Chapter in respect of that relationship as non-trading credits or non-trading debits.
- (2) The adjustment shall be made wherever—
  - (a) the authorised accounting method applied as respects the index-linked gilt-edged security gives credits or debits by reference to the value of the security at two different times, and
  - (b) there is any change in the retail prices index between those times.

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- (3) Subject to subsection (4) below, the adjustment is such an adjustment of the amount which would otherwise be taken for the purposes of that accounting method to be the value of the security at the earlier time (“the opening value”) as results in the amount in fact so taken being equal to the opening value increased or, as the case may be, reduced by the same percentage as the percentage increase or reduction in the retail prices index between the earlier and the later time.
- (4) The Treasury may, in relation to any description of index-linked gilt-edged securities, by order provide that—
  - (a) there are to be no adjustments under this section; or
  - (b) that an adjustment specified in the order (instead of the adjustment specified in subsection (3) above) is to be the adjustment for which this section provides.
- (5) An order under subsection (4) above—
  - (a) shall not have effect in relation to any gilt-edged security issued before the making of the order; but
  - (b) may make different provision for different descriptions of securities.
- (6) For the purposes of this section the percentage increase or reduction in the retail prices index between any two times shall be determined by reference to the difference between—
  - (a) that index for the month in which the earlier time falls; and
  - (b) that index for the month in which the later time falls.
- (7) In this section “index-linked gilt-edged securities” means any gilt-edged securities the amounts of the payments under which are determined wholly or partly by reference to the retail prices index.

## 95 Gilt strips.

- (1) This section has effect for the purposes of the application of an authorised accruals basis of accounting as respects a loan relationship represented by a gilt-edged security or a strip of a gilt-edged security.
- (2) Where a gilt-edged security is exchanged by any person for strips of that security—
  - (a) the security shall be deemed to have been redeemed at the time of the exchange by the payment to that person of its market value; and
  - (b) that person shall be deemed to have acquired each strip for the amount which bears the same proportion to that market value as is borne by the market value of the strip to the aggregate of the market values of all the strips received in exchange for the security.
- (3) Where strips of a gilt-edged security are consolidated into a single gilt-edged security by being exchanged by any person for that security—
  - (a) each of the strips shall be deemed to have been redeemed at the time of the exchange by the payment to that person of the amount equal to its market value; and
  - (b) that person shall be deemed to have acquired the security received in the exchange for the amount equal to the aggregate of the market values of the strips given in exchange for the security.
- (4) References in this section to the market value of a security given or received in exchange for another are references to its market value at the time of the exchange.



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- (5) Without prejudice to the generality of any power conferred by section 202 below, the Treasury may by regulations make provision for the purposes of this section as to the manner of determining the market value at any time of any gilt-edged security (including any strip).
- (6) Regulations under subsection (5) above may—
  - (a) make different provision for different cases; and
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury may think fit.
- (7) In this section “strip” means anything which, within the meaning of section 47 of the <sup>M61</sup>Finance Act 1942, is a strip of a gilt-edged security.

**Marginal Citations**

**M61** 1942 c. 21.

**96 Special rules for certain other gilts.**

- (1) This section applies as respects any loan relationship of a company if—
  - (a) it is represented by a security of any of the following descriptions—
    - (i) 3½% Funding Stock 1999-2004; or
    - (ii) 5½% Treasury Stock 2008-2012;
  - and
  - (b) it is one to which the company is a party otherwise than in the course of activities that form an integral part of a trade carried on by the company.
- (2) The amounts falling for any accounting period to be brought into account for the purposes of this Chapter in respect of a loan relationship to which this section applies shall be confined to amounts relating to interest.
- (3) Only an authorised accruals basis of accounting shall be used for ascertaining those amounts.

**97 Manufactured interest.**

- (1) This section applies where—
  - (a) any amount (“manufactured interest”) is payable by or on behalf of, or to, any company under any contract or arrangements relating to the transfer of an asset representing a loan relationship; and
  - (b) that amount is, or (when paid) will fall to be treated as, representative of interest under that relationship (“the real interest”).
- (2) In relation to that company the manufactured interest shall be treated for the purposes of this Chapter—
  - (a) as if it were interest under a loan relationship to which the company is a party; and
  - (b) where that company is the company to which the manufactured interest is payable, as if that relationship were the one under which the real interest is payable.

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- (3) Any question whether debits or credits falling to be brought into account in the case of any company by virtue of this section—
- (a) are to be brought into account under section 82(2) above, or
  - (b) are to be treated as non-trading debits or non-trading credits,
- shall be determined according to the extent (if any) to which the manufactured interest is paid for the purposes of a trade carried on by the company or is received in the course of activities forming an integral part of such a trade.
- (4) Where section 737A(5) of the Taxes Act 1988 (deemed manufactured payments) has effect in relation to a transaction relating to an asset representing a loan relationship so as, for the purposes of section 737 of, or Schedule 23A to, that Act, to deem there to have been a payment representative of interest under that relationship, this section shall apply as it would have applied if such a representative payment had in fact been made.
- (5) This section does not apply where the manufactured interest is treated by virtue of paragraph 5(2)(c) or (4)(c) of Schedule 23A to the Taxes Act 1988 (manufactured interest passing through the market) as not being income of the person who receives it.

## **98 Collective investment schemes.**

The provisions of this Chapter have effect subject to the provisions of Schedule 10 to this Act (which makes special provision in relation to certain collective investment schemes).

## **99 Insurance companies.**

The preceding provisions of this Chapter have effect subject to Schedule 11 to this Act (which makes special provision in relation to certain insurance companies and in relation to corporate members of Lloyd's).

### *Miscellaneous other provisions*

## **100 Interest on judgments, imputed interest, etc.**

- (1) This Chapter shall have effect in accordance with subsection (2) below where—
- (a) interest on a money debt is payable to or by any company;
  - (b) that debt is one as respects which it stands, or has stood, in the position of a creditor or debtor; and
  - (c) that debt did not arise from a loan relationship.
- (2) It shall be assumed for the purposes of this Chapter—
- (a) that the interest is interest payable under a loan relationship to which the company is a party; but
  - (b) that the only credits or debits to be brought into account for those purposes in respect of that relationship are those relating to the interest.
- (3) References in this section to interest payable on a money debt include references to any amount which, in pursuance of sections 770 to 772 of the Taxes Act 1988 (transactions at an undervalue or overvalue), as those sections have effect by virtue of section 773(4) of that Act, falls to be treated in pursuance of those sections as—

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- (a) interest on a money debt; or
  - (b) interest on an amount which is treated as a money debt.
- (4) Any question whether debits or credits falling to be brought into account in accordance with this section in relation to any company—
- (a) are to be brought into account under section 82(2) above, or
  - (b) are to be treated as non-trading debits or non-trading credits,
- shall be determined according to the extent (if any) to which the interest in question is paid for the purposes of a trade carried on by the company or is received in the course of activities forming an integral part of such a trade, or (in the case of deemed interest) would be deemed to be so paid or received.
- (5) This section has effect subject to the provisions of Schedules 9 and 11 to this Act.

## 101 Financial instruments.

- (1) Chapter II of Part IV of the <sup>M62</sup>Finance Act 1994 (provisions relating to certain financial instruments) shall not apply to any profit or loss which, in accordance with that Chapter, accrues to a company for any accounting period on a qualifying contract by virtue of which the company is a party to any loan relationship if—
- (a) an amount representing that profit or loss, or
  - (b) an amount representing the profit or loss accruing to that company on that contract,
- is brought into account for that period for the purposes of this Chapter.
- (2) After section 147 of that Act (qualifying contracts) there shall be inserted the following section—

### “147A Debt contracts and options to be qualifying contracts.

- (1) For the purposes of this Chapter a debt contract or option is a qualifying contract as regards a qualifying company if the company becomes entitled to rights, or subject to duties, under the contract or option at any time on or after 1st April 1996.
  - (2) For the purposes of this Chapter a qualifying company which is entitled to rights, or subject to duties, under a debt contract or option both immediately before and on 1st April 1996 shall be deemed to have become entitled or subject to those rights or duties on that date.
  - (3) This section has effect subject to paragraph 25 of Schedule 15 to the Finance Act 1996 (transitional provisions).”
- (3) After section 150 of that Act (qualifying contracts) there shall be inserted the section set out in Schedule 12 to this Act (which defines debt contracts and options by reference to contracts and options conferring rights and duties to participate in loan relationships).
- (4) In section 151 of that Act (provisions that may be included in contracts and options), for the words “or a currency contract or option,” in each place where they occur, there shall be substituted “ a currency contract or option or a debt contract or option ”.
- (5) In section 152(1) of that Act (disregard of provisions for relatively small payments in contracts and options), after “150” there shall be inserted “ or 150A ”.

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(6) In section 153(1) of that Act (qualifying payments), for the word “and” at the end of paragraph (c) there shall be substituted—

“(ca) in relation to a qualifying contract which is a debt contract, a payment falling within section 150A(5) or (6) above; and”.

**Marginal Citations**

M62 1994 c. 9.

**102 Discounted securities: income tax provisions.**

Schedule 13 to this Act (which, in connection with the provisions of this Chapter relating to corporation tax, makes provision for income tax purposes about discounted securities) shall have effect.

*Supplemental*

**103 Interpretation of Chapter.**

(1) In this Chapter—

“authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting” shall be construed in accordance with section 85 above;

“creditor relationship”, in relation to a company, means any loan relationship of that company in the case of which it stands in the position of a creditor as respects the debt in question;

“debt” includes a debt the amount of which falls to be ascertained by reference to matters which vary from time to time;

“debtor relationship”, in relation to a company, means any loan relationship of that company in the case of which it stands in the position of a debtor as respects the debt in question;

“gilt-edged securities” means any securities which—

(a) are gilt-edged securities for the purposes of the <sup>M63</sup>Taxation of Chargeable Gains Act 1992; or

(b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they are issued;

“an independent person” means a knowledgeable and willing party dealing at arm’s length;

“international organisation” means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members;

“loan” includes any advance of money, and cognate expressions shall be construed accordingly;

“money” shall be construed in accordance with section 81(6) above and subsection (5) below;

“money debt” shall be construed in accordance with section 81(2) above;

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“non-trading credit” and “non-trading debit” shall be construed in accordance with section 82(3) above;

“retail prices index” has the same meaning as it has, by virtue of section 833(2) of the Taxes Act 1988, in the Income Tax Acts;

“share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise.

- (2) For the purposes of this Chapter a company shall be taken to be a party to a creditor relationship for the purposes of a trade carried on by that company only if it is a party to that relationship in the course of activities forming an integral part of that trade.
- (3) For the purposes of this Chapter, and of so much of any other enactment as contains provision by reference to which amounts fall to be brought into account for the purposes of this Chapter, activities carried on by a company in the course of—
  - (a) any mutual trading, or
  - (b) any mutual insurance or other mutual business which is not life assurance business (within the meaning of Chapter I of Part XII of the Taxes Act 1988),shall be deemed not to constitute the whole or any part of a trade.
- (4) If, in any proceedings, any question arises whether a person is an international organisation for the purposes of any provision of this Chapter, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.
- (5) For the purposes of this Chapter the European currency unit (as for the time being defined in Council Regulation No. 3180/78/EEC or in any Community instrument replacing it) shall be taken to be a currency other than sterling.

#### Marginal Citations

M63 1992 c. 12.

#### 104 Minor and consequential amendments.

Schedule 14 to this Act (which, for the purposes of both corporation tax and income tax, makes certain minor and consequential amendments in connection with the provisions of this Chapter) shall have effect.

#### 105 Commencement and transitional provisions.

- (1) Subject to Schedule 15 to this Act, this Chapter has effect—
  - (a) for the purposes of corporation tax, in relation to accounting periods ending after 31st March 1996; and
  - (b) so far as it makes provision for the purposes of income tax, in relation to the year 1996-97 and subsequent years of assessment.
- (2) Schedule 15 to this Act (which contains transitional provisions and savings in connection with the coming into force of this Chapter) shall have effect.

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## CHAPTER III

### PROVISIONS RELATING TO THE SCHEDULE E CHARGE

#### 106 Living accommodation provided for employees.

- (1) In subsection (1) of section 145 of the Taxes Act 1988 (living accommodation provided for employees), the words “and is not otherwise made the subject of any charge to him by way of income tax” shall be omitted.
- (2) After section 146 of that Act there shall be inserted the following section—

**“146A Priority of rules applying to living accommodation.**

- (1) This section applies where, within the meaning of section 145, living accommodation is provided in any period for any person by reason of his employment.
  - (2) The question whether the employee is to be treated under section 145 or 146 as in receipt of emoluments in respect of the provision of the accommodation shall be determined before any other question whether there is an amount falling to be treated in respect of the provision of that accommodation as emoluments.
  - (3) Tax under Schedule E in respect of the provision of the accommodation shall be chargeable on the employee otherwise than in pursuance of sections 145 and 146 to the extent only that the amount on which it is chargeable by virtue of those sections is exceeded by the amount on which it would be chargeable apart from those sections.”
- (3) This section applies for the year 1996-97 and subsequent years of assessment.

#### 107 Beneficial loans.

- (1) For section 160(1B) of the Taxes Act 1988 (aggregation of loans) there shall be substituted the following subsections—

“(1B) Where, in relation to any year—

- (a) there are loans between the same lender and borrower which are aggregable with each other,
- (b) the lender elects, by notice given to the inspector, for aggregation to apply in the case of that borrower, and
- (c) that notice is given before the end of the period of 92 days after the end of that year,

all the loans between that lender and that borrower which are aggregable with each other shall be treated for the purposes of subsections (1) and (1A) above and Part II of Schedule 7 as a single loan.

- (1BA) For the purposes of subsection (1B) above loans are aggregable with each other for any year where—

- (a) in the case of each of the loans, there is a time in that year, while the loan is outstanding as to any amount, when the lender is a close company and the borrower a director of that company;

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- (b) the benefit of each of the loans is obtained by reason of the borrower's employment;
  - (c) in the case of each of the loans, there is no time in that year when a rate of interest is applied to the loan which is equal to or more than whatever is the official rate at that time;
  - (d) the loans are loans made in the same currency; and
  - (e) none of the loans is a qualifying loan.”
- (2) In paragraph 5 of Schedule 7 to that Act (alternative method of calculation)—
- (a) in sub-paragraph (1)(a), for the words from “for the purpose” to “appeal” there shall be substituted “ at a time allowed by sub-paragraph (2) below ”; and
  - (b) in sub-paragraph (1)(b), for “within the time allowed by sub-paragraph (2) below” there shall be substituted “ at such a time ”.
- (3) For sub-paragraph (2) of that paragraph there shall be substituted the following sub-paragraph—
- “(2) A notice containing a requirement or election for the purposes of sub-paragraph (1) above is allowed to be given at any time before the end of the period of 12 months beginning with the 31st January next following the relevant year.”
- (4) This section has effect for the year 1996-97 and subsequent years of assessment and applies to loans whenever made.

## **108 Incidental benefits for holders of certain offices etc.**

- (1) After section 200 of the Taxes Act 1988 (expenses of Members of Parliament) there shall be inserted the following section—

### **“200AA Incidental benefits for holders of certain offices etc.**

- (1) A person holding any of the offices mentioned in subsection (2) below shall not be charged to tax under Schedule E in respect of—
- (a) any transport or subsistence provided or made available by or on behalf of the Crown to the office-holder or any member of his family or household; or
  - (b) the payment or reimbursement by or on behalf of the Crown of any expenses incurred in connection with the provision of transport or subsistence to the office-holder or any member of his family or household.
- (2) Those offices are—
- (a) any office in Her Majesty's Government in the United Kingdom, and
  - (b) any other office which is one of the offices and positions in respect of which salaries are payable under section 1 of the <sup>M64</sup>Ministerial and other Salaries Act 1975 (whether or not the person holding it is a person to whom a salary is paid or payable under the Act).
- (3) Nothing in this section shall prevent a person from being chargeable to tax under Schedule E in respect of the benefit of a mobile telephone (within the meaning of section 159A).

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- (4) References in this section to a member of the family or household of an office-holder shall be construed in accordance with section 168(4).
- (5) References in this section to the provision of transport to any person include references to the following—
- (a) the provision or making available to that person of any car (whether with or without a driver);
  - (b) the provision of any fuel for a car provided or made available to that person;
  - (c) the provision of any other benefit in connection with a car provided or made available to that person.
- (6) In this section—
- “car” means any mechanically propelled road vehicle; and
- “subsistence” includes food and drink and temporary living accommodation.”

(2) This section has effect for the year 1996–97 and subsequent years of assessment.

**Marginal Citations**

**M64** 1975 c. 27.

**109 Charitable donations: payroll deduction schemes.**

- (1) In section 202(7) of the Taxes Act 1988 (which limits to £900 the deductions attracting relief), for “£900” there shall be substituted “ £1,200 ”.
- (2) This section has effect for the year 1996-97 and subsequent years of assessment.

**110 PAYE settlement agreements.**

After section 206 of the Taxes Act 1988 there shall be inserted the following section—

**“206A PAYE settlement agreements.**

- (1) PAYE regulations may make provision falling within subsection (2) below about the sums which, as sums in respect of income tax under Schedule E on emoluments of a person’s employees, are to be the sums for which the employer is to be accountable to the Board from time to time.
- (2) That provision is provision under which the accountability of the employer, and the sums for which he is to be accountable, are to be determined, to such extent as may be prescribed, in accordance with an agreement between the Board and the employer (“a PAYE settlement agreement”), instead of under PAYE regulations made otherwise than by virtue of this section.
- (3) PAYE regulations may provide for a PAYE settlement agreement to allow sums for which an employer is to be accountable to the Board in accordance with the agreement—



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- (a) to be computed, in cases where there are two or more persons holding employments to which the agreement relates, by reference to a number of those persons all taken together;
  - (b) to include sums representing income tax on an estimated amount taken, in accordance with the agreement, to be the aggregate of the cash equivalents and other amounts chargeable to tax in respect of—
    - (i) taxable benefits provided or made available by reason of the employments to which the agreement relates; and
    - (ii) expenses paid to the persons holding those employments;and
  - (c) to be computed in a manner under which the sums for which the employer is accountable do not necessarily represent an amount of income tax payable in respect of income which (apart from the regulations) is assessable under Schedule E on persons holding employments to which the agreement relates.
- (4) PAYE regulations may provide—
- (a) for an employer who is accountable to the Board under a PAYE settlement agreement for any sum to be so accountable without that sum, or any other sum, being treated for any prescribed purpose as tax deducted from emoluments;
  - (b) for an employee to have no right to be treated as having paid tax in respect of sums for which his employer is accountable under such an agreement;
  - (c) for an employee to be treated, except—
    - (i) for the purposes of the obligations imposed on his employer by such an agreement, and
    - (ii) to such further extent as may be prescribed,as relieved from any prescribed obligations of his under the Income Tax Acts in respect of emoluments from an employment to which the agreement relates; and
  - (d) for such emoluments to be treated as excluded from the employee's income for such further purposes of the Income Tax Acts, and to such extent, as may be prescribed.
- (5) For the purposes of any PAYE regulations made by virtue of this section it shall be immaterial that any agreement to which they relate was entered into before the coming into force of the regulations.
- (6) PAYE regulations made by virtue of this section may—
- (a) make different provision for different cases; and
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Board may think fit.
- (7) Without prejudice to the generality of subsection (6) above, the transitional provision that may be made by virtue of that subsection includes transitional provision for any year of assessment which—
- (a) for the purposes of the regulations, treats sums accounted for in that year before the coming into force of the regulations as accounted for in accordance with an agreement as respects which the regulations have effect after they come into force; and

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- (b) provides, by reference to any provision made by virtue of paragraph (a) above, for income arising in that year before the coming into force of the regulations to be treated as income in relation to which modifications of the Income Tax Acts contained in the regulations apply.
- (8) Without prejudice to the generality of subsection (6) above, any power of the Board to make PAYE regulations with respect to sums falling to be accounted for under such regulations shall include power to make the corresponding provision with respect to sums falling, by virtue of this section, to be accounted for in accordance with a PAYE settlement agreement.
- (9) In this section—
- “employment” means any office or employment the emoluments from which are (or, apart from any regulations made by virtue of this section, would be) assessable to tax under Schedule E, and cognate expressions shall be construed accordingly;
- “PAYE regulations” means regulations under section 203;
- “prescribed” means prescribed by PAYE regulations;
- “taxable benefit”, in relation to an employee, means any benefit provided or made available, otherwise than in the form of a payment of money, to the employee or to a person who is, for the purposes of Chapter II of this Part, a member of his family or household;
- and references in this section to a time before the coming into force of any regulations include references to a time before the commencement of section 110 of the Finance Act 1996 (by virtue of which this section was inserted in this Act).”

## CHAPTER IV

### SHARE OPTIONS, PROFIT SHARING AND EMPLOYEE SHARE OWNERSHIP

#### *Share options*

#### **111 Amount or value of consideration for option.**

- (1) Section 149A of the <sup>M65</sup>Taxation of Chargeable Gains Act 1992 (consideration for grant of option under approved share option schemes not to be deemed to be equal to market value of option) shall be amended as follows.
- (2) In subsection (1)(b) (restriction to approved share option schemes) for “as mentioned in section 185(1) of the Taxes Act (approved share option schemes)” there shall be substituted “ by an individual by reason of his office or employment as a director or employee of that or any other body corporate ”.
- (3) In subsection (2) (grantor to be treated as if the amount or value of the consideration was its actual amount or value) for “The grantor of the option” there shall be substituted “ Both the grantor of the option and the person to whom the option is granted ”.
- (4) Subsection (4) (section not to affect treatment under that Act of person to whom option granted) shall cease to have effect.

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- (5) For the side-note to that section there shall be substituted “ Share option schemes. ”
- (6) This section has effect in relation to any right to acquire shares in a body corporate obtained on or after 28th November 1995 by an individual by reason of his office or employment as a director or employee of a body corporate.

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**Marginal Citations**

**M65** 1992 c. 12.

## 112 Release and replacement.

- (1) After section 237 of the <sup>M66</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted—

**“237A Share option schemes: release and replacement of options.**

- (1) This section applies in any case where a right to acquire shares in a body corporate (“the old right”) which was obtained by an individual by reason of his office or employment as a director or employee of that or any other body corporate is released in whole or in part for a consideration which consists of or includes the grant to that individual of another right (“the new right”) to acquire shares in that or any other body corporate.
- (2) As respects the person to whom the new right is granted—
- (a) without prejudice to subsection (1) above, the new right shall not be regarded for the purposes of capital gains tax as consideration for the release of the old right;
  - (b) the amount or value of the consideration given by him or on his behalf for the acquisition of the new right shall be taken for the purposes of section 38(1) to be the amount or value of the consideration given by him or on his behalf for the old right; and
  - (c) any consideration paid for the acquisition of the new right shall be taken to be expenditure falling within section 38(1)(b).
- (3) As respects the grantor of the new right, in determining for the purposes of this Act the amount or value of the consideration received for the new right, the release of the old right shall be disregarded.”
- (2) Section 238(4) of that Act (which provides that the release of an option under an approved share option scheme in exchange for another option, in connection with a company take-over, is not to involve a disposal, and which is superseded by subsection (1) above) shall cease to have effect.
- (3) This section has effect in relation to transactions effected on or after 28th November 1995.

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**Marginal Citations**

**M66** 1992 c. 12.

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### *Savings-related share option schemes*

#### **113 Exercise of rights by employees of non-participating companies.**

(1) In paragraph 21 of Schedule 9 to the Taxes Act 1988 (provisions which an approved savings-related share option scheme may make with respect to the exercise of rights under the scheme) in sub-paragraph (1), the word “and” immediately preceding paragraph (e) shall be omitted and after that paragraph there shall be inserted “and

(f) if, at the bonus date, a person who has obtained rights under the scheme holds an office or employment in a company which is not a participating company but which is—

(i) an associated company of the grantor, or

(ii) a company of which the grantor has control,

those rights may be exercised within six months of that date.”

(2) After sub-paragraph (3) of that paragraph there shall be inserted—

“(4) Where a scheme approved before the date of the passing of the Finance Act 1996 is altered before 5th May 1998 so as to include such a provision as is specified in sub-paragraph (1)(f) above, the scheme may apply the provision to rights obtained under the scheme before the alteration takes effect, whether the bonus date in relation to the rights occurred before or after the passing of that Act; and where the provision is applied to such rights by virtue of this sub-paragraph, its application to such rights shall not itself be regarded as the acquisition of a right for the purposes of this Schedule.

This sub-paragraph has effect subject to paragraph 4 above.”

(3) In paragraph 26(3) of that Schedule (only directors or employees of grantor or participating company to be eligible to participate, except as provided by paragraph 19 or pursuant to such a provision as is referred to in paragraph 21(1)(e)) after “21(1)(e)” there shall be inserted “ or (f) ”.

### *Other share option schemes*

#### **114 Requirements to be satisfied by approved schemes.**

(1) Part IV of Schedule 9 to the Taxes Act 1988 (requirements applicable to approved share option schemes which are not savings-related) shall be amended in accordance with subsections (2) and (3) below.

(2) In paragraph 28 (scheme must impose limit on aggregate market value of shares which may be acquired in pursuance of rights obtained under the scheme or certain related schemes)—

(a) in sub-paragraph (1) (aggregate market value of shares not to exceed the appropriate limit) for “the appropriate limit” there shall be substituted “ £30,000 ”; and

(b) sub-paragraphs (2) and (4) (meaning of the appropriate limit and, for the purposes of that definition, the relevant emoluments) shall cease to have effect.

(3) In paragraph 29 (price at which shares may be acquired to be stated and to be not manifestly less than the market value, or, in certain circumstances, 85 per cent. of the

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market value, of shares of the same class) for sub-paragraphs (1) to (6) there shall be substituted—

“(1) The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—

- (a) must be stated at the time the right is obtained, and
- (b) must not be manifestly less than the market value of shares of the same class at that time or, if the Board and the grantor agree in writing, at such earlier time or times as may be provided in the agreement.”

(4) Section 185 of the Taxes Act 1988 (approved share option schemes) shall be amended in accordance with subsections (5) to (7) below.

(5) In subsection (2), for “Subject to subsections (6) to (6B) below” there shall be substituted “ Subject to subsection (6) below ”.

(6) For subsections (6) to (6B) there shall be substituted—

“(6) Where, in the case of a right obtained by a person under a scheme which is not a savings-related share option scheme, the aggregate of—

- (a) the amount or value of any consideration given by him for obtaining the right, and
- (b) the price at which he may acquire the shares by exercising the right, is less than the market value, at the time he obtains the right, of the same quantity of issued shares of the same class, he shall be chargeable to tax under Schedule E for the year of assessment in which he obtains the right on the amount of the difference; and the amount so chargeable shall be treated as earned income, whether or not it would otherwise fall to be so treated.”

(7) In subsections (7) and (8) for “(6A)” there shall be substituted “ (6) ”.

(8) In section 120 of the <sup>M67</sup>Taxation of Chargeable Gains Act 1992 (increase in expenditure by reference to tax charged in relation to shares etc) in subsection (6) (which defines the applicable provision) for paragraph (b) (which refers to subsection (6A) of section 185 of the Taxes Act 1988) there shall be substituted—

- “(b) subsection (6A) of that section (as that subsection has effect in relation to rights obtained before the day on which the Finance Act 1996 was passed), or
- (c) subsection (6) of that section (as that subsection has effect in relation to rights obtained on or after that day).”

(9) Schedule 16 to this Act, which makes provision with respect to share option schemes approved before the day on which this Act is passed, shall have effect.

(10) Subsections (3) to (7) above have effect in relation to rights obtained on or after the day on which this Act is passed.

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**Marginal Citations**

M67 1992 c. 12.

**115 Transitional provisions.**

(1) If, during the period—

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- (a) beginning with 17th July 1995, and
  - (b) ending with the day preceding the passing of this Act,
- any rights have been obtained by a person under an approved share option scheme in circumstances falling within subsection (2) below, the rights shall be treated for the purposes of sections 185 to 187 of, and Schedule 9 to, the Taxes Act 1988 as being rights obtained otherwise than in accordance with the provisions of an approved share option scheme.
- (2) The circumstances mentioned in subsection (1) above are circumstances such that, on the assumptions in subsection (3) below, there would, by virtue of paragraph 28 or 29 of Schedule 9 to the Taxes Act 1988 (limit on what may be obtained and requirements with respect to price), have been, with respect to the operation of the scheme, a contravention of any of the relevant requirements or of the scheme itself.
- (3) The assumptions mentioned in subsection (2) above are—
- (a) that the amendments made by subsection (2) of section 114 above had effect at all times on and after 17th July 1995;
  - (b) that the amendments made by subsections (3) to (7) of that section had effect in relation to rights obtained at any time on or after that date; and
  - (c) that the provisions of paragraphs 1(1) and 2 to 5 of Schedule 16 to this Act had effect at all times on and after 17th July 1995, but with the substitution for references to the day on which this Act is passed of references to that date.
- (4) For the purposes of this section, rights obtained by a person on or after 17th July 1995 shall be treated as having been obtained by him before that date if—
- (a) the scheme in question is one approved before that date;
  - (b) an offer of the rights or an invitation to apply for them was made in writing to that person before that date; and
  - (c) he obtained the rights within the period of thirty days beginning with the day on which the offer or invitation was made.
- (5) In this section—
- “approved share option scheme” means an approved share option scheme, within the meaning of section 185 of the Taxes Act 1988, other than a savings-related share option scheme;
  - “relevant requirements” has the meaning given in paragraph 1(1) of Schedule 9 to the Taxes Act 1988;
  - “savings-related share option scheme” has the meaning given by Schedule 9 to the Taxes Act 1988.

### *Profit sharing schemes*

#### **116 The release date.**

- (1) In section 187(2) of the Taxes Act 1988 (interpretation of sections 185 and 186 of, and Schedules 9 and 10 to, that Act) in the definition of “release date” (the fifth anniversary of the date on which shares were appropriated to a participant in a profit sharing scheme) for “fifth” there shall be substituted “third”.
- (2) The amendment made by subsection (1) above shall have effect in relation to shares of a participant in a profit sharing scheme if the third anniversary of the appropriation of the shares to the participant occurs on or after the day on which this Act is passed.

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- (3) If the third anniversary of the appropriation of any shares to a participant in a profit sharing scheme has occurred, but the fifth anniversary of their appropriation to him has not occurred, before the passing of this Act, then, in the application of sections 186 and 187 of, and Schedules 9 and 10 to, the Taxes Act 1988 in relation to those shares, the release date shall be the day on which this Act is passed.

### 117 The appropriate percentage.

- (1) In Schedule 10 to the Taxes Act 1988 (further provisions relating to profit sharing schemes) for paragraph 3 (the appropriate percentage) there shall be substituted—

“3 (1) For the purposes of any of the relevant provisions charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of his shares, the “appropriate percentage” in relation to those shares is 100 per cent., unless sub-paragraph (2) below applies.

(2) Where the individual—

(a) ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company as mentioned in paragraph 2(a) above, or

(b) reaches the relevant age,

before the event occurs, the “appropriate percentage” is 50 per cent., unless paragraph 6(4) below applies.”

- (2) In section 187(8) of that Act (determination of certain values and percentages where shares are appropriated to a participant at different times) paragraph (b) (which relates to the appropriate percentage), and the word “and” immediately preceding it, shall cease to have effect.

- (3) Subsections (1) and (2) above have effect in relation to the occurrence, on or after the day on which this Act is passed, of events by reason of whose occurrence any provision of section 186 or 187 of, or Schedule 9 or 10 to, the Taxes Act 1988 charges an individual to income tax under Schedule E.

### 118 The appropriate allowance.

- (1) In section 186(12) of the Taxes Act 1988 (determination of the appropriate allowance for the purposes of the charge to tax on capital receipts by a participant in an approved profit sharing scheme)—

(a) for “£100” there shall be substituted “ £60 ”; and

(b) for “five years” there shall be substituted “ three years ”.

- (2) Subsection (1) above has effect for the year 1997-98 and subsequent years of assessment.

#### *Employee share ownership trusts*

### 119 Removal of requirement for at least one year’s service.

- (1) In Schedule 5 to the <sup>M68</sup>Finance Act 1989 (employee share ownership trusts) in paragraph 4(5)(a) (for a trust to be a qualifying ESOT, its beneficiaries must have been

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employees or directors of the company for at least one year) the words “not less than one year and” shall cease to have effect.

(2) This section applies to trusts established on or after the day on which this Act is passed.

#### Marginal Citations

**M68** 1989 c. 26.

## 120 Grant and exercise of share options.

(1) In Schedule 5 to the <sup>M69</sup>Finance Act 1989 (employee share ownership trusts), in paragraph 4 (the trust deed must contain provision as to the beneficiaries) after sub-paragraph (2) there shall be inserted—

“(2A) The trust deed may provide that a person is a beneficiary at a given time if at that time he is eligible to participate in a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—

- (a) which was established by a company within the founding company’s group, and
- (b) which is approved under that Schedule.

(2B) Where a trust deed contains a rule conforming with sub-paragraph (2A) above it must provide that the only powers and duties which the trustees may exercise in relation to persons who are beneficiaries by virtue only of that rule are those which may be exercised in accordance with the provisions of a scheme such as is mentioned in that sub-paragraph.”

(2) In consequence of the amendment made by subsection (1) above, section 69 of, and Schedule 5 to, the <sup>M70</sup>Finance Act 1989 (which respectively make provision about chargeable events in relation to the trustees of qualifying employee share ownership trusts and the requirements to be satisfied by such trusts) shall be amended in accordance with the following provisions of this section.

(3) In subsection (4) of that section (meaning of “qualifying terms” for the purposes of the provision that the transfer of securities to beneficiaries is a chargeable event if it is not on qualifying terms)—

- (a) in paragraph (a) (securities which are transferred at the same time must be transferred on similar terms) after “time” there shall be inserted “ other than those transferred on a transfer such as is mentioned in subsection (4ZA) below ”;
- (b) in paragraph (b) (securities must have been offered to all the persons who are beneficiaries), after “trust deed” there shall be inserted “ by virtue of a rule which conforms with paragraph 4(2), (3) or (4) of Schedule 5 to this Act ”; and
- (c) in paragraph (c) (securities must be transferred to all such beneficiaries who have accepted the offer) for “beneficiaries” there shall be substituted “ persons ”.

(4) After subsection (4) of that section there shall be inserted—

“(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



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- (b) that right was obtained in accordance with the provisions of a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—
    - (i) which was established by, or by a company controlled by, the company which established the trust, and
    - (ii) which is approved under that Schedule, and
  - (c) that right is being exercised in accordance with the provisions of that scheme, and
  - (d) the consideration for the transfer is payable to the trustees.”
- (5) In sub-paragraph (4) of paragraph 4 of that Schedule (trust deed may provide for charity to be beneficiary if there are no beneficiaries falling within a rule conforming with sub-paragraph (2) or (3)) after “sub-paragraph (2)” there shall be inserted “, (2A) ”.
- (6) In sub-paragraph (7) of that paragraph (trust deed must not provide for a person to be a beneficiary unless he falls within a rule conforming with sub-paragraph (2), (3) or (4)) after “sub-paragraph (2)” there shall be inserted “, (2A) ”.
- (7) In sub-paragraph (8) of that paragraph (trust deed must provide that person with material interest in founding company cannot be a beneficiary) after “at a particular time (the relevant time)” there shall be inserted “ by virtue of a rule which conforms with sub-paragraph (2), (3) or (4) above ”.
- (8) In paragraph 5(2) of that Schedule (trust deed must be so expressed that it is apparent that the general functions of the trustees are as mentioned in paragraphs (a) to (e)) after paragraph (c) there shall be inserted—
  - “(cc) to grant rights to acquire shares to persons who are beneficiaries under the terms of the trust deed;”.
- (9) In paragraph 9 of that Schedule (trust deed must provide that transfers of securities to beneficiaries must be on qualifying terms and within the qualifying period) in sub-paragraph (2) (meaning of qualifying terms)—
  - (a) in paragraph (a) (securities which are transferred at the same time must be transferred on similar terms) after “time” there shall be inserted “ other than those transferred on a transfer such as is mentioned in sub-paragraph (2ZA) below ”;
  - (b) in paragraph (b) (securities must have been offered to all the persons who are beneficiaries) after “trust deed” there shall be inserted “ by virtue of a rule which conforms with paragraph 4(2), (3) or (4) above ”; and
  - (c) in paragraph (c) (securities must be transferred to all such beneficiaries who have accepted the offer) for “beneficiaries” there shall be substituted “ persons ”.
- (10) After sub-paragraph (2) of that paragraph there shall be inserted—
  - “(2ZA) For the purposes of sub-paragraph (1) above a transfer of securities is also made on qualifying terms if—
    - (a) it is made to a person exercising a right to acquire shares, and
    - (b) that right was obtained in accordance with the provisions of a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—

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- (i) which was established by, or by a company controlled by, the founding company, and
  - (ii) which is approved under that Schedule, and
  - (c) that right is being exercised in accordance with the provisions of that scheme, and
  - (d) the consideration for the transfer is payable to the trustees.”
- (11) In paragraph 10 of that Schedule (trust deed must not contain features not essential or reasonably incidental to purposes mentioned in that paragraph)—
- (a) after “acquiring sums and securities,” there shall be inserted “ granting rights to acquire shares to persons who are eligible to participate in savings-related share option schemes approved under Schedule 9 to the Taxes Act 1988, transferring shares to such persons, ”; and
  - (b) for “Schedule 9 to the Taxes Act 1988” there shall be substituted “ that Schedule ”.
- (12) This section has effect in relation to trusts established on or after the day on which this Act is passed.

#### **Marginal Citations**

**M69** 1989 c. 26.

**M70** 1989 c. 26.

## **CHAPTER V**

### SELF ASSESSMENT, GENERAL MANAGEMENT ETC.

#### *General*

#### **121 Returns and self assessment.**

- (1) In subsection (1) of section 8 of the <sup>M71</sup>Taxes Management Act 1970 (personal return), and in subsection (1) of section 8A of that Act (trustee’s return), after the words “year of assessment,” there shall be inserted the words “ and the amount payable by him by way of income tax for that year, ”.
- (2) In subsection (1A) of each of those sections, the words from “and the amounts referred to” to the end shall cease to have effect.
- (3) After that subsection of each of those sections there shall be inserted the following subsection—
  - “(1AA) For the purposes of subsection (1) above—
  - (a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and
  - (b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the

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aggregate amount of any income tax deducted at source and any tax credits to which section 231 of the principal Act applies.”

- (4) For subsection (1) of section 9 of that Act (returns to include self-assessment) there shall be substituted the following subsection—

“(1) Subject to subsection (2) below, every return under section 8 or 8A of this Act shall include a self-assessment, that is to say—

- (a) an assessment of the amounts in which, on the basis of the information contained in the return and taking into account any relief or allowance a claim for which is included in the return, the person making the return is chargeable to income tax and capital gains tax for the year of assessment; and
- (b) an assessment of the amount payable by him by way of income tax, that is to say, the difference between the amount in which he is assessed to income tax under paragraph (a) above and the aggregate amount of any income tax deducted at source and any tax credits to which section 231 of the principal Act applies.”

- (5) In subsection (1)(b) of section 11AA of that Act (return of profits to include self-assessment), for the words “, allowance or repayment of tax” there shall be substituted the words “ or allowance ”.

- (6) In subsection (1)(a) of section 12AA of that Act (partnership return), after the words “so chargeable” there shall be inserted the words “ and the amount payable by way of income tax by each such partner ”.

- (7) For subsection (1A) of that section there shall be substituted the following subsection—

“(1A) For the purposes of subsection (1) above—

- (a) the amount in which a partner is chargeable to income tax or corporation tax is a net amount, that is to say, an amount which takes into account any relief or allowance for which a claim is made; and
- (b) the amount payable by a partner by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which section 231 of the principal Act applies.”

- (8) This section and sections 122, 123, 125 to 127 and 141 below—

- (a) so far as they relate to income tax and capital gains tax, have effect as respects the year 1996-97 and subsequent years of assessment, and
- (b) so far as they relate to corporation tax, have effect as respects accounting periods ending on or after the appointed day for the purposes of Chapter III of Part IV of the <sup>M72</sup>Finance Act 1994.

#### Marginal Citations

M71 1970 c. 9.

M72 1994 c. 9.

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## 122 Notional tax deductions and payments.

- (1) At the end of subsection (1) of section 9 of the <sup>M73</sup>Taxes Management Act 1970 (as substituted by section 121(4) above) there shall be inserted the words “ but nothing in this subsection shall enable a self-assessment to show as repayable any income tax treated as deducted or paid by virtue of section 233(1), 246D(1), 249(4), 421(1), 547(5) or 599A(5) of the principal Act. ”
- (2) At the end of subsection (1) of section 59B of that Act (payment of income tax and capital gains tax) there shall be inserted the words “ but nothing in this subsection shall require the repayment of any income tax treated as deducted or paid by virtue of section 233(1), 246D(1), 249(4), 421(1), 547(5) or 599A(5) of the principal Act. ”
- (3) In subsection (1) of section 233 of the Taxes Act 1988 (taxation of certain recipients of distributions), for paragraphs (a) and (b) there shall be substituted the following paragraphs—
  - “(a) that person shall be treated as having paid income tax at the lower rate on the amount or value of the distribution;
  - (b) no repayment shall be made of any income tax treated by virtue of paragraph (a) above as having been paid;”.
- (4) In paragraph (a) of subsection (1A) of that section—
  - (a) for sub-paragraph (i) there shall be substituted the following sub-paragraph—
    - “(i) income on which that person falls to be treated as having paid income tax at the lower rate by virtue of paragraph (a) of subsection (1) above, or”; and
  - (b) for the words “that assessment” there shall be substituted the words “ that subsection ”.
- (5) In the following enactments, namely—
  - (a) subsection (2)(a) of section 246D of that Act (individuals etc.); and
  - (b) subsection (4)(a) of section 249 of that Act (stock dividends treated as income),
 for the words from “no assessment” to “on it” there shall be substituted the words “ the individual shall be treated as having paid income tax at the lower rate on that income ”.
- (6) In subsection (1)(b) of section 421 of that Act (taxation of borrower when loan released), for the words “no assessment shall be made on him in respect of” there shall be substituted the words “ he shall not be liable to pay ”.
- (7) The following shall cease to have effect, namely—
  - (a) in subsection (5)(a) of section 547 of that Act (method of charging to tax), the words from “no assessment” to “but”;
  - (b) in subsection (6) of section 599A of that Act (charge to tax: payments out of surplus funds), the words from “subject” to “and”; and
  - (c) subsection (7) of that section.

### Marginal Citations

M73 1970 c. 9.

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### 123 Liability of partners.

- (1) In subsection (2) of section 12AA of the <sup>M74</sup>Taxes Management Act 1970 (partnership return) after the words “with the notice” there shall be inserted the words “ or a successor of his ”.
- (2) In subsection (3) of that section after the words “the partner” there shall be inserted the words “ or a successor of his ”.
- (3) In subsection (7)(a) of that section, the words “any part of” shall cease to have effect.
- (4) At the end of that section there shall be inserted the following subsections—
  - “(11) In this Act “successor”, in relation to a person who is required to make and deliver, or has made and delivered, a return in pursuance of a notice under subsection (2) or (3) above, but is no longer available, means—
    - (a) where a partner is for the time being nominated for the purposes of this subsection by a majority of the relevant partners, that partner; and
    - (b) where no partner is for the time being so nominated, such partner as—
      - (i) in the case of a notice under subsection (2) above, is identified in accordance with rules given with that notice; or
      - (ii) in the case of a notice under subsection (3) above, is nominated for the purposes of this subsection by an officer of the Board;and “predecessor” and “successor”, in relation to a person so nominated or identified, shall be construed accordingly.
  - (12) For the purposes of subsection (11) above a nomination under paragraph (a) of that subsection, and a revocation of such a nomination, shall not have effect in relation to any time before notice of the nomination or revocation is given to an officer of the Board.
  - (13) In this section “relevant partner” means a person who was a partner at any time during the period for which the return was made or is required, or the personal representatives of such a person.”
- (5) In subsection (1) of section 12AB of that Act (partnership return to include partnership statement)—
  - (a) in paragraph (a), for the words “each period of account ending within the period in respect of which the return is made” there shall be substituted the words “ the period in respect of which the return is made and each period of account ending within that period ”;
  - (b) in sub-paragraph (i) of that paragraph, for the words “that period” there shall be substituted the words “ the period in question ”;
  - (c) after that sub-paragraph there shall be inserted the following sub-paragraph—
    - “(ia) the amount of the consideration which, on that basis, has accrued to the partnership in respect of each disposal of partnership property during that period,”;and
  - (d) in paragraph (b), after the words “such period” there shall be inserted the words “ as is mentioned in paragraph (a) above ” and after the word “loss,” there shall be inserted the word “ consideration, ”.

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- (6) In subsection (2) of that section—
- (a) in paragraph (a) after the words “to that person” there shall be inserted the words “ or a successor ”; and
  - (b) in paragraph (b) for the words from “partnership statement” to “he” there shall be substituted the words “ or a predecessor’s partnership statement as to give effect to any amendments to the return in which it is included which he or a predecessor ”.
- (7) In section 12AC of that Act (power to enquire into partnership return)—
- (a) in subsection (1)(b), after the word “person” there shall be inserted the words “ or a successor of that person ”; and
  - (b) subsection (6) (which is superseded by subsection (4) above) shall cease to have effect.
- (8) In subsection (1)(b) of section 93A of that Act (failure to make partnership return), after the word “he” there shall be inserted the words “ or a successor of his ”.
- (9) In subsections (3) and (4) of that section, after the words “the representative partner” there shall be inserted the words “ or a successor of his ”.
- (10) In subsection (6) of that section—
- (a) after the words “the representative partner” there shall be inserted the words “ or a successor of his ”; and
  - (b) after the words “that partner”, in both places where they occur, there shall be inserted the words “ or successor ”.
- (11) In subsection (7) of that section, for the words “the representative partner had a reasonable excuse for not delivering the return” there shall be substituted the words “ the person for the time being required to deliver the return (whether the representative partner or a successor of his) had a reasonable excuse for not delivering it ”.
- (12) In subsection (1)(a)(ii) of section 95A of that Act (incorrect partnership return or accounts), for the words “such a return” there shall be substituted the words “ a return of such a kind ”.
- (13) In subsection (3) of that section—
- (a) after the words “the representative partner” there shall be inserted the words “ or a successor of his ”; and
  - (b) after the words “that partner”, in both places where they occur, there shall be inserted the words “ or successor ”.
- (14) In subsection (1) of section 118 of that Act (interpretation), for the definition of “successor” there shall be substituted the following definition—
- ““successor”, in relation to a person who is required to make and deliver, or has made and delivered, a return under section 12AA of this Act, and “predecessor” and “successor”, in relation to the successor of such a person, shall be construed in accordance with section 12AA(11) of this Act;”.

**Marginal Citations**

M74 1970 c. 9.

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**Status:** Point in time view as at 29/04/1996. This version of this Act contains provisions that are not valid for this point in time.  
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## 124 Retention of original records.

- (1) The <sup>M75</sup>Taxes Management Act 1970, as it has effect—
- (a) for the purposes of income tax and capital gains tax, as respects the year 1996-97 and subsequent years of assessment, and
  - (b) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M76</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions),
- shall be amended in accordance with the following provisions of this section.
- (2) In section 12B (records to be kept for purposes of returns) in subsection (4) (which permits the duty to preserve records to be discharged by the preservation of the information contained in them, and provides for the admissibility in evidence of copy documents) at the beginning there shall be inserted the words “ Except in the case of records falling within subsection (4A) below, ”.
- (3) After that subsection there shall be inserted—
- “(4A) The records which fall within this subsection are—
- (a) any statement in writing such as is mentioned in—
    - (i) subsection (1) of section 234 of the principal Act (amount of qualifying distribution and tax credit), or
    - (ii) subsection (1) of section 352 of that Act (gross amount, tax deducted, and actual amount paid, in certain cases where payments are made under deduction of tax),which is furnished by the company or person there mentioned, whether after the making of a request or otherwise;
  - (b) any certificate or other record (however described) which is required by regulations under section 566(1) of the principal Act to be given to a sub-contractor (within the meaning of Chapter IV of Part XIII of that Act) on the making of a payment to which section 559 of that Act (deductions on account of tax) applies;
  - (c) any such record as may be requisite for making a correct and complete claim in respect of, or otherwise requisite for making a correct and complete return so far as relating to, an amount of tax—
    - (i) which has been paid under the laws of a territory outside the United Kingdom, or
    - (ii) which would have been payable under the law of such a territory but for a relief to which section 788(5) of the principal Act (relief for promoting development and relief contemplated by double taxation arrangements) applies.”
- (4) In subsection (5) of that section (penalty for failure to comply with section 12B(1) or (2A)) for “Subject to subsection (5A)” there shall be substituted “ Subject to subsections (5A) and (5B) ”.
- (5) After subsection (5A) of that section there shall be inserted—
- “(5B) Subsection (5) above also does not apply where—
- (a) the records which the person fails to keep or preserve are records falling within paragraph (a) of subsection (4A) above; and

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- (b) an officer of the Board is satisfied that any facts which he reasonably requires to be proved, and which would have been proved by the records, are proved by other documentary evidence furnished to him.”
- (6) In Schedule 1A (claims etc not included in returns) in paragraph 2A (keeping and preserving of records) in sub-paragraph (3) (which makes corresponding provision to section 12B(4)) at the beginning there shall be inserted “ Except in the case of records falling within section 12B(4A) of this Act, ”.
- (7) In sub-paragraph (4) of that paragraph (penalty for failure to comply with paragraph 2A(1)) at the beginning there shall be inserted “ Subject to sub-paragraph (5) below, ”.
- (8) After that sub-paragraph there shall be inserted—
  - “(5) Sub-paragraph (4) above does not apply where—
    - (a) the records which the person fails to keep or preserve are records falling within paragraph (a) of section 12B(4A) of this Act; and
    - (b) an officer of the Board is satisfied that any facts which he reasonably requires to be proved, and which would have been proved by the records, are proved by other documentary evidence furnished to him.”
- (9) The amendments made by this section shall not have effect in relation to—
  - (a) any time before this Act is passed, or
  - (b) any records which a person fails to preserve before this Act is passed.

#### **Marginal Citations**

**M75** 1970 c. 9.

**M76** 1994 c. 9.

## **125 Determination of tax where no return delivered.**

- (1) For subsection (1) of section 28C of the <sup>M77</sup>Taxes Management Act 1970 (determination of tax where no return delivered) there shall be substituted the following subsections—
  - “(1) This section applies where—
    - (a) a notice has been given to any person under section 8 or 8A of this Act (the relevant section), and
    - (b) the required return is not delivered on or before the filing date.
  - (1A) An officer of the Board may make a determination of the following amounts, to the best of his information and belief, namely—
    - (a) the amounts in which the person who should have made the return is chargeable to income tax and capital gains tax for the year of assessment; and
    - (b) the amount which is payable by him by way of income tax for that year;
 and subsection (1AA) of section 8 or, as the case may be, section 8A of this Act applies for the purposes of this subsection as it applies for the purposes of subsection (1) of that section.”
- (2) In subsection (3) of that section the words “or 11AA” shall cease to have effect.



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- (3) In subsection (6) of that section for the words “, section 8A(1A) or, as the case may be, section 11(4)” there shall be substituted the words “ or, as the case may be, section 8A(1A) ”.
- (4) After subsection (5) of section 59B of that Act (payment of income tax and capital gains tax) there shall be inserted the following subsection—
- “(5A) Where a determination under section 28C of this Act which has effect as a person’s self-assessment is superseded by his self-assessment under section 9 of this Act, any amount of tax which is payable or repayable by virtue of the supersession shall be payable or (as the case may be) repayable on or before the day given by subsection (3) or (4) above.”

**Marginal Citations**

M77 1970 c. 9.

**126 PAYE regulations.**

- (1) After subsection (9) of section 59A of the Taxes Management Act 1970 (payments on account of income tax) there shall be inserted the following subsection—
- “(10) Regulations under section 203 of the principal Act (PAYE) may provide that, for the purpose of determining the amount of any such excess as is mentioned in subsection (1) above, any necessary adjustments in respect of matters prescribed by the regulations shall be made to the amount of tax deducted at source under that section.”
- (2) After subsection (7) of section 59B of that Act (payment of income tax and capital gains tax) there shall be inserted the following subsection—
- “(8) Regulations under section 203 of the principal Act (PAYE) may provide that, for the purpose of determining the amount of the difference mentioned in subsection (1) above, any necessary adjustments in respect of matters prescribed by the regulations shall be made to the amount of tax deducted at source under that section.”

**127 Repayment postponed pending completion of enquiries.**

After subsection (4) of section 59B of the <sup>M78</sup>Taxes Management Act 1970 (payment of income tax and capital gains tax) there shall be inserted the following subsection—

- “(4A) Where in the case of a repayment the return on the basis of which the person’s self-assessment was made under section 9 of this Act is enquired into by an officer of the Board—
- (a) nothing in subsection (3) or (4) above shall require the repayment to be made before the day on which, by virtue of section 28A(5) of this Act, the officer’s enquiries are treated as completed; but
  - (b) the officer may at any time before that day make the repayment, on a provisional basis, to such extent as he thinks fit.”

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### Marginal Citations

M78 1970 c. 9.

## 128 Claims for reliefs involving two or more years.

- (1) In section 42 of the Taxes Management Act 1970 (procedure for making claims etc.)—
- (a) subsections (3A) and (3B) (which are superseded by subsection (2) below) shall cease to have effect;
  - (b) in subsection (7)(a), the words “534, 535, 537A, 538” shall cease to have effect; and
  - (c) after subsection (11) there shall be inserted the following subsection—
 

“(11A) Schedule 1B to this Act shall have effect as respects certain claims for relief involving two or more years of assessment.”
- (2) After Schedule 1A to that Act there shall be inserted, as Schedule 1B, the provisions set out in Schedule 17 to this Act (claims for reliefs involving two or more years).
- (3) For subsection (9) of section 96 of the Taxes Act 1988 (relief for fluctuating profits of farming etc.) there shall be substituted the following subsection—
- “(9) Where a person makes a claim under this section, any claim by him for relief under any other provision of the Income Tax Acts for either of the two years of assessment—
- (a) shall not be out of time if made before the end of the period during which the claim under this section is capable of being revoked; and
  - (b) if already made, may be amended or revoked before the end of that period;
- and, in relation to a claim made by being included in a return, any reference in this subsection to amending or revoking the claim is a reference to amending the return by amending or, as the case may be, omitting the claim.”
- (4) In section 108 of that Act (election for carry-back)—
- (a) for the words “the inspector within two years after” there shall be substituted the words “an officer of the Board within one year from the 31st January next following”; and
  - (b) the words from “and, in any such case” to the end shall cease to have effect.
- (5) For subsection (5) of section 534 of that Act (relief for copyright payments) there shall be substituted the following subsections—
- “(5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above—
- (a) shall have effect as a claim with respect to all qualifying payments, that is to say, all such payments in respect of the copyright in the same work which are receivable by the claimant, whether before or after the claim; and
  - (b) where qualifying payments are so receivable in two or more years of assessment, shall be treated for the purposes of the Management Act as if it were two or more separate claims, each in respect of the qualifying payments receivable in one of those years.

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- (5A) A claim under this section may be made at any time within one year from the 31st January next following—
- (a) in the case of such a claim as is mentioned in subsection (5) above, the latest year of assessment in which a qualifying payment is receivable; and
  - (b) in the case of any other claim, the year of assessment in which the payment in question is receivable.
- (5B) For the purposes of subsections (5) and (5A) above, a payment shall be regarded as receivable in the year of assessment in computing the amount of the profits or gains of which it would, but for this section, be included.”
- (6) After subsection (6) of that section there shall be inserted the following subsection—
- “(6A) In the case of persons carrying on a trade, profession or business in partnership, no claim may be made under any of the following provisions, namely—
- (a) this section and section 535;
  - (b) section 537 as it has effect in relation to this section and section 535; and
  - (c) section 537A and section 538,
- in respect of any payment or sum receivable on or after 6th April 1996; and nothing in any of those provisions shall be construed as applying to profits chargeable to corporation tax.”
- (7) In section 535 of that Act (relief where copyright sold after ten years or more), the following shall cease to have effect, namely—
- (a) in subsection (4), the words “Subject to subsection (5) below”;
  - (b) subsections (5) and (7); and
  - (c) in subsection (6), the words from “unless the author” to the end.
- (8) After subsection (8) of that section there shall be inserted the following subsection—
- “(8A) No claim for relief made under subsection (1) above shall be allowed unless it is made within one year from the 31st January next following the year of assessment in which the payment is receivable; and for the purposes of this subsection a payment shall be regarded as receivable in the year of assessment in computing the amount of the profits or gains of which it would, but for this section, be included.”
- (9) For subsection (5) of section 537A of that Act (relief for payments in respect of designs) there shall be substituted the following subsections—
- “(5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above—
- (a) shall have effect as a claim with respect to all qualifying payments, that is to say, all such payments in respect of rights in the design in question which are receivable by the claimant, whether before or after the claim; and
  - (b) where qualifying payments are so receivable in two or more years of assessment, shall be treated for the purposes of the Management Act as if it were two or more separate claims, each in respect of the qualifying payments receivable in one of those years.

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- (5A) A claim under this section may be made at any time within one year from the 31st January next following—
- (a) in the case of such a claim as is mentioned in subsection (5) above, the latest year of assessment in which a qualifying payment is receivable; and
  - (b) in the case of any other claim, the year of assessment in which the payment in question is receivable.
- (5B) For the purposes of subsections (5) and (5A) above, a payment shall be regarded as receivable in the year of assessment in computing the amount of the profits or gains of which it would, but for this section, be included.”
- (10) After subsection (3) of section 538 of that Act (relief for painters, sculptors and other artists) there shall be inserted the following subsection—
- “(4) No claim for relief made under subsection (1) above shall be allowed unless it is made within one year from the 31st January next following the year of assessment in which the payment is receivable; and for the purposes of this subsection a payment shall be regarded as receivable in the year of assessment in computing the amount of the profits or gains of which it would, but for this section, be included.”
- (11) This section (except subsections (1)(b) and (6) above) and Schedule 17 to this Act have effect as respects claims made (or deemed to be made) in relation to the year 1996-97 or later years of assessment.
- (12) Subsection (1)(b) above has effect as respects claims made in relation to the year 1997-98 or later years of assessment.

## **129 Claims for medical insurance and vocational training relief.**

- (1) Nothing in section 42 of the <sup>M79</sup>Taxes Management Act 1970 (procedure for making claims etc.), or Schedule 1A to that Act (claims etc. not included in returns), shall apply in relation to—
- (a) any claim under subsection (6)(b) of section 54 (medical insurance relief) of the <sup>M80</sup>Finance Act 1989 (“the 1989 Act”); or
  - (b) any claim under subsection (5)(b) of section 32 (vocational training relief) of the <sup>M81</sup>Finance Act 1991 (“the 1991 Act”).
- (2) In section 54(6)(b) of the 1989 Act and section 32(5)(b) of the 1991 Act, after the words “on making a claim” there shall be inserted the words “ in accordance with regulations ”.
- (3) In section 57(1) of the 1989 Act (medical insurance relief: supplementary), after paragraph (a) there shall be inserted the following paragraph—
- “(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;”.
- (4) In section 33(1) of the 1991 Act (vocational training relief: supplementary), after paragraph (a) there shall be inserted the following paragraph—
- “(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 32(5)(b) above;”.

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- (5) Subsection (1)(a) above shall not apply in relation to claims made before the coming into force of regulations made by virtue of section 57(1)(aa) of the 1989 Act.
- (6) Subsection (1)(b) above shall not apply in relation to claims made before the coming into force of regulations made by virtue of section 33(1)(aa) of the 1991 Act.

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**Marginal Citations**

- M79** 1970 c. 9.  
**M80** 1989 c. 26.  
**M81** 1991 c. 31.

**130 Procedure for giving notices.**

- (1) Section 42 of, and Schedule 1A to, the Taxes Management Act 1970, as they have effect—
  - (a) for the purposes of income tax and capital gains tax, as respects the year 1996-97 and subsequent years of assessment, and
  - (b) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M82</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions),shall be amended in accordance with the following provisions of this section.
- (2) In subsection (7) of section 42 (which contains a list of provisions, claims under which must be made in accordance with subsection (6)) the following words shall cease to have effect, that is to say—
  - (a) in paragraph (a), “62A,” and “401,”; and
  - (b) in paragraph (c), “30,” “33,” “48, 49,” and “124A,”.
- (3) In subsection (10) of that section (section 42 to apply in relation to elections and notices as it applies in relation to claims) the words “and notices” shall cease to have effect.
- (4) In subsection (11) of that section (Schedule 1A to apply as respects any claim, election or notice made otherwise than in a return under section 8 etc) for the words “, election or notice” there shall be substituted “ or election ”.
- (5) In paragraph 1 of Schedule 1A (claims etc. not included in returns), in the definition of “claim”, for the words “means a claim, election or notice” there shall be substituted “ means a claim or election ”.

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**Marginal Citations**

- M82** 1994 c. 9.

**131 Interest on overdue tax.**

- (1) Section 110 of the <sup>M83</sup>Finance Act 1995 (interest on overdue tax) shall be deemed to have been enacted with the insertion after subsection (3) of the following subsection—

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“(4) So far as it relates to partnerships whose trades, professions or businesses were set up and commenced before 6th April 1994, subsection (1) above has effect as respects the year 1997-98 and subsequent years of assessment.”

- (2) In subsection (3) of section 86 of the <sup>M84</sup>Taxes Management Act 1970 (which was substituted by the said section 110), for the words “section 93” there shall be substituted the words “section 92”.
- (3) In Schedule 19 to the <sup>M85</sup>Finance Act 1994, paragraph 23 (which is superseded by the said section 110) shall cease to have effect.

#### Marginal Citations

- M83** 1995 c. 4.  
**M84** 1970 c. 9.  
**M85** 1994 c. 9.

### 132 Overdue tax and excessive payments by the Board.

Schedule 18 to this Act (which amends enactments relating to overdue tax or excessive payments by the Board) shall have effect.

### 133 Claims and enquiries.

Schedule 19 to this Act (which, for purposes connected with self-assessment, further amends provisions relating to claims and enquiries) shall have effect.

### 134 Discretions exercisable by the Board etc.

- (1) Schedule 20 to this Act (which in connection with self-assessment modifies enactments by virtue of which a decision or other action affecting an assessment may be or is required to be taken by the Board, or one of their officers, before the making of the assessment) shall have effect.
- (2) Subject to subsection (3) below, the amendments made by that Schedule shall have effect—
- (a) for the purposes of income tax and capital gains tax, as respects the year 1996-97 and subsequent years of assessment; and
  - (b) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).
- (3) Paragraphs 22 and 23 of that Schedule shall have effect in relation to shares issued on or after 6th April 1996.

### 135 Time limits for claims etc.

- (1) Schedule 21 to this Act (which in connection with self-assessment modifies enactments which impose time limits on the making of claims, elections, adjustments and assessments and the giving of notices, and enactments which provide for the giving of notice to the inspector) shall have effect.

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- (2) Subject to subsections (3) to (5) below, the amendments made by that Schedule shall have effect—
- (a) for the purposes of income tax and capital gains tax, as respects the year 1996-97 and subsequent years of assessment; and
  - (b) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M86</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).
- (3) The amendments made to the <sup>M87</sup>Capital Allowances Act 1990 and the Finance Act 1994 by that Schedule, in their application to trades, professions or vocations set up and commenced before 6th April 1994, shall (so far as relating to income tax) have effect as respects the year 1997-98 and subsequent years of assessment.
- (4) The Capital Allowances Act 1990, as it has effect for the year 1996-97 in relation to trades, professions or vocations set up and commenced before 6th April 1994, shall (so far as relating to income tax) have effect as respects that year with the following modifications, that is to say, as if—
- (a) in sections 25(3)(c), 30(1), 31(3) and 33(1) and (4), for “two years after the end of” there were substituted “ the first anniversary of the 31st January next following ”;
  - (b) in section 37(2)(c), for “more than two years after the end of the chargeable period or its basis period” there were substituted “ later than the first anniversary of the 31st January next following the year of assessment in which ends the basis period ”;
  - (c) in section 53(2), for “before the expiry of the period of two years beginning at the end of” there were substituted “ on or before the first anniversary of the 31st January next following ”;
  - (d) in section 68(5), for “two years after the end of that period” there were substituted “ the first anniversary of the 31st January next following the year of assessment in which the relevant period ends ”;
  - (e) in section 68(9A)(b), for “two years after the end of” there were substituted “ the first anniversary of the 31st January next following the year of assessment in which ends ”;
  - (f) in section 129(2), for “not more than two years after the end of” there were substituted “ on or before the first anniversary of the 31st January next following ”;
  - (g) in section 141(3), for “the inspector not later than two years after the end of” there were substituted “ an officer of the Board on or before the first anniversary of the 31st January next following ”.
- (5) Section 118 of the <sup>M88</sup>Finance Act 1994, as it has effect for the year 1996-97 in relation to trades, professions or vocations set up and commenced before 6th April 1994, shall (so far as relating to income tax) have effect as respects that year as if, in subsection (3), for “two years after the end of” there were substituted “ the first anniversary of the 31st January next following ”.

#### Marginal Citations

**M86** 1994 c. 9.

**M87** 1990 c. 1.

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**M88** 1994 c. 9.

### 136 Appeals.

Schedule 22 to this Act (which makes provision, in connection with self-assessment, about appeals) shall have effect.

### *Companies*

### 137 Schedules 13 and 16 to the Taxes Act 1988.

- (1) Schedule 23 to this Act shall have effect.
- (2) The amendments made by that Schedule shall have effect as respects return periods ending on or after the appointed day for the purposes of Chapter III of Part IV of the <sup>M89</sup>Finance Act 1994.
- (3) In subsection (2) above “return period” means—
  - (a) so far as relating to Schedule 13 to the Taxes Act 1988, a period for which a return is required to be made under paragraph 1 of that Schedule; and
  - (b) so far as relating to Schedule 16 to that Act, a period for which a return is required to be made under paragraph 2 of that Schedule.

#### **Marginal Citations**

**M89** 1994 c. 9.

### 138 Accounting periods.

Schedule 24 to this Act (which makes provision, in connection with self-assessment, in relation to accounting periods) shall have effect.

### 139 Surrenders of advance corporation tax.

Schedule 25 to this Act (which makes provision, in connection with self-assessment, about surrenders of advance corporation tax) shall have effect.

### *Chargeable gains*

### 140 Transfer of company’s assets to investment trust.

- (1) In section 101 of the <sup>M90</sup>Taxation of Chargeable Gains Act 1992 (transfer of company’s assets to investment trust) after subsection (1) there shall be inserted—
 

“(1A) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the end of the last accounting period to end before the beginning of the accounting period mentioned in that subsection.”



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- (2) This section shall have effect as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M91</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).

**Marginal Citations**

**M90** 1992 c. 12.

**M91** 1994 c. 9.

**141 Roll-over relief.**

- (1) In subsection (4) of section 152 of the Taxation of Chargeable Gains Act 1992 (roll-over relief)—
- (a) after the word “making” there shall be inserted the words “ or amending ”; and
  - (b) after the word “assessments”, in the second place where it occurs, there shall be inserted the words “ or amendments ”.
- (2) After section 153 of that Act there shall be inserted the following section—

**“153A Provisional application of sections 152 and 153.**

- (1) This section applies where a person carrying on a trade who for a consideration disposes of, or of his interest in, any assets (“the old assets”) declares, in his return for the chargeable period in which the disposal takes place—
- (a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets (“the new assets”) which on the acquisition will be taken into use, and used only, for the purposes of the trade;
  - (b) that the acquisition will take place as mentioned in subsection (3) of section 152; and
  - (c) that the new assets will be within the classes listed in section 155.
- (2) Until the declaration ceases to have effect, section 152 or, as the case may be, section 153 shall apply as if the acquisition had taken place and the person had made a claim under that section.
- (3) The declaration shall cease to have effect as follows—
- (a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 152 or 153, on the day on which it is so withdrawn or superseded; and
  - (b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.
- (4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—
- (a) shall be made by making or amending assessments or by repayment or discharge of tax; and
  - (b) shall be so made notwithstanding any limitation on the time within which assessments or amendments may be made.
- (5) In this section “the relevant day” means—

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- (a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place;
  - (b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.
- (6) Subsections (6), (8), (10) and (11) of section 152 shall apply for the purposes of this section as they apply for the purposes of that section.”
- (3) In section 175 of that Act (replacement of business assets by members of a group)—
- (a) in subsections (2A) and (2B), after the words “Section 152” there shall be inserted the words “ or 153 ”; and
  - (b) in subsection (2C), for the words “Section 152 shall not” there shall be substituted the words “ Neither section 152 nor section 153 shall ”.
- (4) In section 246 of that Act (time of disposal or acquisition), the words from “or, if earlier” to the end shall cease to have effect.
- (5) In subsection (5)(b) of section 247 of that Act (roll-over relief on compulsory acquisition), for the words “subsection (3)” there shall be substituted the words “ subsections (3) and (4) ”.
- (6) After that section there shall be inserted the following section—

**“247A Provisional application of section 247.**

- (1) This section applies where a person who disposes of land (“the old land”) to an authority exercising or having compulsory powers declares, in his return for the chargeable period in which the disposal takes place—
  - (a) that the whole or any specified part of the consideration for the disposal will be applied in the acquisition of other land (“the new land”);
  - (b) that the acquisition will take place as mentioned in subsection (3) of section 152; and
  - (c) that the new land will not be land excluded from section 247(1)(c) by section 248.
- (2) Until the declaration ceases to have effect, section 247 shall apply as if the acquisition had taken place and the person had made a claim under that section.
- (3) For the purposes of this section, subsections (3) to (5) of section 153A shall apply as if the reference to section 152 or 153 were a reference to section 247 and the reference to the old assets were a reference to the old land.
- (4) In this section “land” and “authority exercising or having compulsory powers” have the same meaning as in section 247.”

**142 Premiums for leases.**

- (1) Paragraph 3 of Schedule 8 to the <sup>M92</sup>Taxation of Chargeable Gains Act 1992 (premiums for leases) shall be amended as follows.

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- (2) In sub-paragraph (2), for the words “for the period” to the end there shall be substituted the words “, being a premium which—
- (a) is due when the sum is payable by the tenant; and
  - (b) where the sum is payable in lieu of rent, is in respect of the period in relation to which the sum is payable.”
- (3) In sub-paragraph (3), for the words “for the period” to the end there shall be substituted the words “, being a premium which—
- (a) is due when the sum is payable by the tenant; and
  - (b) is in respect of the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.”
- (4) For sub-paragraphs (4) to (6) there shall be substituted the following sub-paragraphs—
- “(4) Where under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, that shall not be the occasion of any recomputation of the gain accruing on the receipt of any other premium, and the premium shall be regarded—
- (a) in the case of a premium deemed to have been received for the surrender of a lease, as consideration for a separate transaction which is effected when the premium is deemed to be due and consists of the disposal by the landlord of his interest in the lease; and
  - (b) in any other case, as consideration for a separate transaction which is effected when the premium is deemed to be due and consists of a further part disposal of the freehold or other asset out of which the lease is granted.
- (5) If under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, otherwise than as consideration for the surrender of the lease, and the landlord is a tenant under a lease the duration of which does not exceed 50 years, this Schedule shall apply—
- (a) as if an amount equal to the amount of that premium deemed to have been received had been given by way of consideration for the grant of the part of the sublease covered by the period in respect of which the premium is deemed to have been paid; and
  - (b) as if that consideration were expenditure incurred by the sublessee and attributable to that part of the sublease under section 38(1)(b).”
- (5) This section has effect as respects sums payable on or after 6th April 1996.

**Marginal Citations**

M92 1992 c. 12.

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## CHAPTER VI

### MISCELLANEOUS PROVISIONS

#### *Reliefs*

#### 143 Annual payments under certain insurance policies.

(1) After section 580 of the Taxes Act 1988 there shall be inserted the following sections—

**“580A Relief from tax on annual payments under certain insurance policies.**

- (1) This section applies (subject to subsection (7)(b) below) in the case of any such annual payment under an insurance policy as—
  - (a) apart from this section, would be brought into charge under Case III of Schedule D; or
  - (b) is equivalent to a description of payment brought into charge under Case III of that Schedule but (apart from this section) would be brought into charge under Case V of that Schedule.
- (2) Subject to the following provisions of this section, the annual payment shall be exempt from income tax if—
  - (a) it constitutes a benefit provided under so much of an insurance policy as provides insurance against a qualifying risk;
  - (b) the provisions of the policy by which insurance is provided against that risk are self-contained (within the meaning of section 580B);
  - (c) the only annual payments relating to that risk for which provision is made by that policy are payments in respect of a period throughout which the relevant conditions of payment are satisfied; and
  - (d) at all times while the policy has contained provisions relating to that risk, those provisions have been of a qualifying type.
- (3) For the purposes of this section and section 580B a qualifying risk is any risk falling within either of the following descriptions, that is to say—
  - (a) a risk that the insured will (or will in any specified way) become subject to, or to any deterioration in a condition resulting from, any physical or mental illness, disability, infirmity or defect;
  - (b) a risk that circumstances will arise as a result of which the insured will cease to be employed or will cease to carry on any trade, profession or vocation carried on by him.
- (4) For the purposes of this section the relevant conditions of payment are satisfied in relation to payments under an insurance policy for so long as any of the following continues, that is to say—
  - (a) an illness, disability, infirmity or defect which is insured against by the relevant part of the policy, and any related period of convalescence or rehabilitation;
  - (b) any period during which the insured is, in circumstances insured against by the relevant part of the policy, either unemployed or not carrying on a trade, profession or vocation;

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- (c) any period during which the income of the insured (apart from any benefits under the policy) is less, in circumstances so insured against, than it would have been if those circumstances had not arisen; or
- (d) any period immediately following the end, as a result of the death of the insured, of any period falling within any of paragraphs (a) to (c) above;

and in this subsection “the relevant part of the policy” means so much of it as relates to insurance against one or more risks mentioned in subsection (3) above.

- (5) For the purposes of subsection (2)(d) above provisions relating to a qualifying risk are of a qualifying type if they are of such a description that their inclusion in any policy of insurance containing provisions relating only to a comparable risk would (apart from any reinsurance) involve the possibility for the insurer that a significant loss might be sustained on the amounts payable by way of premiums in respect of the risk, taken together with any return on the investment of those amounts.
- (6) An annual payment shall not be exempt from income tax under this section if it is paid in accordance with a contract the whole or any part of any premiums under which have qualified for relief for the purposes of income tax by being deductible either—
  - (a) in the computation of the insured’s income from any source; or
  - (b) from the insured’s income.
- (7) Where a person takes out any insurance policy wholly or partly for the benefit of another and that other person pays or contributes to the payment of the premiums under that policy, then to the extent only that the benefits under the policy are attributable, on a just and reasonable apportionment, to the payments or contributions made by that other person—
  - (a) that other person shall be treated for the purposes of this section and section 580B as the insured in relation to that policy;
  - (b) this section shall have effect in relation to those benefits, so far as comprised in payments to that other person or his spouse, as if the reference in subsection (1)(a) above to Case III of Schedule D included a reference to Schedule E; and
  - (c) subsection (6) above shall have effect as if the references to the premiums under the policy were references only to the payments or contributions made by that other person in respect of the premiums.
- (8) Where—
  - (a) payments are made to or in respect of any person (“the beneficiary”) under any insurance policy (“the individual policy”),
  - (b) the rights under the individual policy in accordance with which the payments are made superseded, with effect from the time when another policy (“the employer’s policy”) ceased to apply to that person, any rights conferred under that other policy,
  - (c) the employer’s policy is or was a policy entered into wholly or partly for the benefit of persons holding office or employment under any person (“the employer”) against risks falling within subsection (3)(a) above,

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- (d) the individual policy is one entered into in pursuance of, or in accordance with, any provisions contained in the employer’s policy, and
- (e) the beneficiary has ceased to hold office or employment under the employer as a consequence of the occurrence of anything insured against by so much of the employer’s policy as related to risks falling within subsection (3)(a) above,

this section shall have effect as if the employer’s policy and the individual policy were one policy.

- (9) In the preceding provisions of this section references to the insured, in relation to any insurance policy, include references to—
  - (a) the insured’s spouse; and
  - (b) in the case of a policy entered into wholly or partly for purposes connected with the meeting of liabilities arising from an actual or proposed transaction identified in the policy, any person on whom any of those liabilities will fall jointly with the insured or his spouse.
- (10) References in this section and section 580B to insurance against a risk include references to any insurance for the provision (otherwise than by way of indemnity) of any benefits against that risk, and references to what is insured against by a policy shall be construed accordingly.

**580B Meaning of “self-contained” for the purposes of s.580A.**

- (1) For the purposes of section 580A the provisions of an insurance policy by which insurance is provided against a qualifying risk are self-contained unless subsection (2) or (3) below applies to the provisions of that policy so far as they relate to that risk; but, in determining whether either of those subsections so applies, regard shall be had to all the persons for whose benefit insurance is provided by that policy against that risk.
- (2) This subsection applies to the provisions of an insurance policy so far as they relate to a qualifying risk if—
  - (a) that insurance policy contains provision for the payment of benefits other than those relating to that risk;
  - (b) the terms of the policy so far as they relate to that risk, or the manner in which effect is given to those terms, would have been significantly different if the only benefits under the policy had been those relating to that risk; and
  - (c) that difference is not one relating exclusively to the fact that the amount of benefits receivable by or in respect of any person under the policy is applied for reducing the amount of other benefits payable to or in respect of that person under the policy.
- (3) This subsection applies to the provisions of an insurance policy (“the relevant policy”) so far as they relate to a qualifying risk if—
  - (a) the insured under that policy is, or has been, the insured under one or more other policies;
  - (b) that other policy, or each of those other policies, is in force or has been in force at a time when the relevant policy was in force or at the time immediately before the relevant policy was entered into;

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- (c) the terms of the relevant policy so far as relating to that risk, or the manner in which effect is given to those terms, would have been significantly different if the other policy or policies had not been entered into; and
    - (d) that difference is not one relating exclusively to the fact that the amount of benefits receivable by or in respect of any person under the other policy, or any of the other policies, is applied for reducing the amount of benefits payable to or in respect of that person under the relevant policy.
  - (4) In subsections (2)(b) and (3)(c) above the references to the terms of a policy so far as they relate to a risk include references to the terms fixing any amount payable by way of premium or otherwise in respect of insurance against that risk.”
- (2) This section has effect for the year 1996-97 and subsequent years of assessment in relation to—
  - (a) any payment which under the policy in question falls to be paid at any time on or after 6th April 1996; and
  - (b) any payment not falling within paragraph (a) above in relation to which the conditions mentioned in subsection (3)(a) and (b) below are satisfied.
- (3) This section shall also be deemed to have had effect for earlier years of assessment in relation to any payment in relation to which the following conditions are satisfied, that is to say—
  - (a) the payment was made under a policy in relation to which the requirements of subsection (4) below were fulfilled; and
  - (b) the policy in question provided for the right to annual payments under the policy to cease when all the liabilities in question were discharged.
- (4) The requirements of this subsection are fulfilled in relation to any policy if—
  - (a) the only or main purpose of the insurance under the policy was to secure that the insured would be able to meet (in whole or in part) liabilities that would or might arise from any transaction;
  - (b) the policy expressly identified the transaction or, as the case may be, all the transactions (whether actual or proposed) by reference to which the insurance was taken out; and
  - (c) none of the transactions which would or might give rise to the liabilities mentioned in paragraph (a) above could be one entered into after any of the circumstances insured against arose.
- (5) In subsection (4) above “transaction” includes any arrangements for the provision of credit or for the supply of services to residential premises.

#### 144 Vocational training.

- (1) Section 32 of the <sup>M93</sup>Finance Act 1991 (vocational training relief) shall be amended in accordance with the following provisions of this section.
- (2) In subsection (1) (application of section) for paragraph (ca) (individual has attained school leaving age etc at time of paying for the course) there shall be substituted—
  - “(ca) at the time the payment is made, the individual—

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- (i) in a case where the qualifying course of vocational training is such a course by virtue only of paragraph (b) of subsection (10) below, has attained the age of thirty, or
  - (ii) in any other case, has attained school-leaving age and, if under the age of nineteen, is not a person who is being provided with full-time education at a school.”
- (3) For subsection (10) (meaning of “qualifying course of vocational training”) there shall be substituted—

“(10) In this section “qualifying course of vocational training” means—

- (a) any programme of activity capable of counting towards a qualification—
  - (i) accredited as a National Vocational Qualification by the National Council for Vocational Qualifications; or
  - (ii) accredited as a Scottish Vocational Qualification by the Scottish Vocational Education Council; or
- (b) any course of training which—
  - (i) satisfies the conditions set out in the paragraphs of section 589(1) of the Taxes Act 1988 (qualifying courses of training etc),
  - (ii) requires participation on a full-time or substantially full-time basis, and
  - (iii) extends for a period which consists of or includes four consecutive weeks,

but treating any time devoted to study in connection with the course as time devoted to the practical application of skills or knowledge.”

- (4) This section applies to payments made on or after 6th May 1996.

#### **Marginal Citations**

**M93** 1991 c. 31.

#### **145 Personal reliefs for non-resident EEA nationals.**

- (1) In section 278(2)(a) of the Taxes Act 1988 (exclusion of non-residents from entitlement to personal reliefs not to apply to Commonwealth citizens or citizens of the Republic of Ireland), for “a citizen of the Republic of Ireland” there shall be substituted “an EEA national”.
- (2) After subsection (8) of that section (claims to be made to the Board) there shall be added the following subsection—
- “(9) In this section “EEA national” means a national of any State, other than the United Kingdom, which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.”
- (3) This section has effect for the year 1996-97 and subsequent years of assessment.



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#### 146 Exemptions for charities.

- (1) Section 505(1) of the Taxes Act 1988 (exemptions for charities) shall be amended as follows.
- (2) For paragraph (a) (rents etc.) there shall be substituted the following paragraph—
  - “(a) exemption from tax under Schedules A and D in respect of any profits or gains arising in respect of rents or other receipts from an estate, interest or right in or over any land (whether situated in the United Kingdom or elsewhere) to the extent that the profits or gains—
    - (i) arise in respect of rents or receipts from an estate, interest or right vested in any person for charitable purposes; and
    - (ii) are applied to charitable purposes only;”.
- (3) For sub-paragraph (ii) of paragraph (c) (yearly interest and annual payments) there shall be substituted the following sub-paragraphs—
  - “(ii) from tax under Case III of Schedule D,
  - (iia) from tax under Case IV or V of Schedule D in respect of income equivalent to income chargeable under Case III of that Schedule but arising from securities or other possessions outside the United Kingdom,
  - (iib) from tax under Case V of Schedule D in respect of income consisting in any such dividend or other distribution of a company not resident in the United Kingdom as would be chargeable to tax under Schedule F if the company were so resident, and”.
- (4) In paragraph (e) (trading profits), after “by a charity” there shall be inserted “ (whether in the United Kingdom or elsewhere) ”.
- (5) This section has effect—
  - (a) for the purposes of income tax, for the year 1996-97 and subsequent years of assessment; and
  - (b) for the purposes of corporation tax, in relation to accounting periods ending after 31st March 1996.

#### 147 Withdrawal of relief for Class 4 contributions.

- (1) In section 617 of the Taxes Act 1988 (social security benefits and contributions), subsection (5) (relief for Class 4 contributions) shall cease to have effect.
- (2) In consequence of the provision made by subsection (1) above, in paragraph 3(2) of Schedule 2 to—
  - (a) the <sup>M94</sup>Social Security Contributions and Benefits Act 1992, and
  - (b) the <sup>M95</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992,the words “ (e) section 617(5) (relief for Class 4 contributions); ” shall be omitted.
- (3) This section shall have effect in relation to the year 1996-97 and subsequent years of assessment.

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#### Marginal Citations

**M94** 1992 c. 4.

**M95** 1992 c. 7.

### 148 Mis-sold personal pensions etc.

- (1) Income tax shall not be chargeable on any payment falling within subsection (3) or (5) below.
- (2) Receipt of a payment falling within subsection (3) below shall not be regarded for the purposes of capital gains tax as the disposal of an asset.
- (3) A payment falls within this subsection if it is a capital sum by way of compensation for loss suffered, or reasonably likely to be suffered, by a person in a case where that person, or some other person, acting in reliance on bad investment advice at least some of which was given during the period beginning with 29th April 1988 and ending with 30th June 1994,—
  - (a) has, while eligible, or reasonably likely to become eligible, to be a member of an occupational pension scheme, instead become a member of a personal pension scheme or entered into a retirement annuity contract;
  - (b) has ceased to be a member of, or to pay contributions to, an occupational pension scheme and has instead become a member of a personal pension scheme or entered into a retirement annuity contract;
  - (c) has transferred to a personal pension scheme accrued rights of his under an occupational pension scheme; or
  - (d) has ceased to be a member of an occupational pension scheme and has instead (by virtue of such a provision as is mentioned in section 591(2)(g) of the Taxes Act 1988) entered into arrangements for securing relevant benefits by means of an annuity contract.
- (4) A payment chargeable to income tax apart from subsection (1) above may nevertheless be regarded as a capital sum for the purpose of determining whether it falls within subsection (3) above.
- (5) A payment falls within this subsection if and to the extent that it is a payment of interest, on the whole or any part of a capital sum such as is mentioned in subsection (3) above, for a period ending on or before the earliest date on which a determination (whether or not subsequently varied on an appeal or in any other proceedings) of the amount of the particular capital sum in question is made, whether by agreement or by a decision of—
  - (a) a court, tribunal or commissioner,
  - (b) an arbitrator or (in Scotland) arbiter, or
  - (c) any other person appointed for the purpose.
- (6) In this section—
 

“bad investment advice” means investment advice in respect of which an action against the person who gave it has been, or may be, brought—

  - (a) in or for negligence;
  - (b) for breach of contract;
  - (c) by reason of a breach of a fiduciary obligation; or

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(d) by reason of a contravention which is actionable under section 62 of the <sup>M96</sup>Financial Services Act 1986;

“investment advice” means advice such as is mentioned in paragraph 15 of Schedule 1 to the <sup>M97</sup>Financial Services Act 1986;

“occupational pension scheme” means—

(a) a scheme approved, or being considered for approval, under Chapter I of Part XIV of the Taxes Act 1988 (retirement benefit schemes);

(b) a relevant statutory scheme, as defined in section 611A(1) of that Act; or

(c) a fund to which section 608 of that Act applies (superannuation funds approved before 6th April 1980 etc);

“personal pension scheme” has the meaning given by section 630(1) of the Taxes Act 1988;

“relevant benefits” has the meaning given by section 612(1) of the Taxes Act 1988;

“retirement annuity contract” means a contract made before 1st July 1988 and approved by the Board under or by virtue of any provision of Chapter III of Part XIV of the Taxes Act 1988.

(7) This section shall have effect, and be taken always to have had effect, in relation to any payment falling within subsection (3) or (5) above, whether made before or after the passing of this Act.

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**Marginal Citations**

**M96** 1986 c. 60.

**M97** 1986 c. 60.

**149 Annual payments in residuary cases.**

(1) Section 347A of the Taxes Act 1988 (annual payments not a charge on the income of a payer) shall apply to any payment made on or after 6th April 1996—

(a) in pursuance of any obligation which falls within section 36(4)(a) of the <sup>M98</sup>Finance Act 1988 (existing obligations under certain court orders), and

(b) for the benefit, maintenance or education of a person (whether or not the person to whom the payment is made) who attained the age of 21 before 6th April 1994,

as if that obligation were not an existing obligation within the definition contained in section 36(4) of the Finance Act 1988.

(2) Subsection (1) above does not apply to any payment to which section 38 of the Finance Act 1988 (treatment of certain maintenance payments under existing obligations) applies.

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**Marginal Citations**

**M98** 1988 c. 39.

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## **150 Income tax exemption for periodical payments of damages and compensation for personal injury.**

- (1) The sections set out in Schedule 26 to this Act shall be inserted after section 329 of the <sup>M99</sup>Taxes Act 1988.
- (2) The first of those sections supersedes sections 329A and 329B inserted by the Finance Act 1995 and applies to payments received after the passing of this Act irrespective of when the agreement or order referred to in that section was made or took effect.
- (3) Subsections (1) and (2) of the second of those sections supersede section 329C inserted by the <sup>M100</sup>Criminal Injuries Compensation Act 1995 and apply to payments received after the passing of that Act.
- (4) The repeal of sections 329A and 329B does not affect the operation of those sections in relation to payments received before the passing of this Act.

### **Marginal Citations**

**M99** 1995 c. 4.

**M100** 1995 c. 53.

## *Taxation of benefits*

## **151 Benefits under pilot schemes.**

- (1) The Treasury may by order make provision for the Income Tax Acts to have effect in relation to any amount of benefit payable by virtue of a Government pilot scheme as if it was, as they think fit, either—
  - (a) wholly or partly exempt from income tax and, accordingly, to be disregarded in computing the amount of any receipts brought into account for income tax purposes; or
  - (b) to the extent specified in the order, to be brought into account for the purposes of income tax as income of a description so specified or as a receipt of a description so specified.
- (2) The Treasury may by order provide for any amount of benefit payable by virtue of a Government pilot scheme to be left out of account, to the extent specified in the order, in the determination for the purposes of section 153 of the <sup>M101</sup>Capital Allowances Act 1990 (subsidies etc.) of how far any expenditure has been or is to be met directly or indirectly by the Crown or by an authority or person other than the person actually incurring it.
- (3) In this section “Government pilot scheme” means any arrangements (whether or not contained in a scheme) which—
  - (a) are made, under any enactment or otherwise, by the Secretary of State or any Northern Ireland department;
  - (b) make provision for or about the payment of amounts of benefit either—
    - (i) for purposes that are similar to those for which any social security or comparable benefit is payable; or

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- (ii) for purposes connected with the carrying out of any functions of the Secretary of State or any such department in relation to employment or training for employment;
  - (c) are arrangements relating to a temporary experimental period; and
  - (d) are made wholly or partly for the purpose of facilitating a decision as to whether, or to what extent, it is desirable for provision to be made on a permanent basis for or in relation to any benefit.
- (4) In subsection (3)(b) above the reference to making provision for or about the payment of amounts of benefit for purposes that are similar to those for which any social security or comparable benefit is payable shall include a reference to making provision by virtue of which there is a modification of the conditions of entitlement to, or the conditions for the payment of, an existing social security or comparable benefit.
- (5) An order under this section may—
  - (a) make different provision for different cases, and
  - (b) contain such incidental, supplemental, consequential and transitional provision (including provision modifying provision made by or under the Income Tax Acts) as the Treasury may think fit.
- (6) In this section “benefit” includes any allowance, grant or other amount the whole or any part of which is payable directly or indirectly out of public funds.
- (7) The power to make an order under this section—
  - (a) shall be exercisable for the year 1996-97 and subsequent years of assessment; and
  - (b) so far as exercisable for the year 1996-97, shall be exercisable in relation to benefits, allowances and other amounts paid at times on or after 6th April 1996 but before the making of the order.
- (8) The Treasury shall not make an order under this section containing any such provision as is mentioned in subsection (1)(b) above unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

**Marginal Citations**  
M101 1990 c. 1.

**152 Jobfinder’s grant.**

- (1) The Income Tax Acts shall have effect, and be deemed always to have had effect, as if jobfinder’s grant were exempt from income tax and, accordingly, were to be disregarded in computing the amount of any receipts brought into account for income tax purposes.
- (2) In this section “jobfinder’s grant” means grant paid under that name by virtue of arrangements made in pursuance of section 2 of the <sup>M102</sup>Employment and Training Act 1973 or section 1 of the <sup>M103</sup>Employment and Training Act (Northern Ireland) 1950 (arrangements for assisting persons to select, train for, obtain or retain employment).

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#### **Marginal Citations**

**M102** 1973 c. 50.

**M103** 1950 c. 29 (N.I.).

### *Investments*

#### **153 Foreign income dividends.**

Schedule 27 to this Act (which makes provision relating to foreign income dividends) shall have effect.

#### **154 FOTRA securities.**

- (1) The modifications which, under section 60 of the <sup>M104</sup>Finance Act 1940, may be made for the purposes of any issue of securities to the conditions about tax exemption specified in section 22 of the <sup>M105</sup>Finance (No. 2) Act 1931 shall include a modification by virtue of which the tax exemption contained in any condition of the issue applies, as respects capital, irrespective of where the person with the beneficial ownership of the securities is domiciled.
- (2) Subject to subsections (3) to (5) below, nothing in the Tax Acts shall impose any charge to tax on any person in respect of so much of any profits or gains arising from a FOTRA security, or from any loan relationship represented by a FOTRA security, as is expressed to be exempt from tax in the tax exemption condition applying to that security.
- (3) Exemption from tax shall not be conferred by virtue of subsection (2) above in relation to any security unless the requirements imposed as respects that exemption by the conditions with which the security is issued (including any requirement as to the making of a claim) are complied with.
- (4) The tax exemption condition of a FOTRA security shall not be taken to confer any exemption from any charge to tax imposed by virtue of the provisions of Chapter IA of Part XV or Chapter III of Part XVII of the Taxes Act 1988 (anti-avoidance provisions for residents etc.)
- (5) Nothing in this section shall entitle any person to any repayment of tax which he has not claimed within the time limit which would be applicable under the Tax Acts (apart from this section) to a claim for the repayment of that tax.
- (6) A person with the beneficial ownership of a FOTRA security who would, by virtue of this section, be exempt from tax in respect of some or all of the profits and gains arising from that security, or from any loan relationship represented by it, shall not be entitled for the purposes of income tax or corporation tax to bring into account any amount—
  - (a) in respect of changes in the value of that security;
  - (b) as expenses or disbursements incurred in, or in connection with, the holding of the security or any transaction relating to the security; or
  - (c) as a debit given, in respect of any loan relationship represented by that security, by any provision of Chapter II of this Part of this Act in respect of such a relationship.

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- (7) Schedule 28 to this Act (which contains amendments consequential on the provisions of this section) shall have effect.
- (8) References in this section to a FOTRA security are references to—
- (a) any security issued with such a condition about exemption from taxation as is authorised in relation to its issue by virtue of section 22 of the <sup>M106</sup>Finance (No. 2) Act 1931; or
  - (b) any 3½% War Loan 1952 Or After which was issued with a condition authorised by virtue of section 47 of the <sup>M107</sup>Finance (No. 2) Act 1915;
- and references, in relation to such a security, to the tax exemption condition shall be construed accordingly.
- (9) This section and Schedule 28 to this Act shall have effect—
- (a) for the purposes of income tax, for the year 1996-97 and subsequent years of assessment; and
  - (b) for the purposes of corporation tax, for accounting periods ending after 31st March 1996.

**Marginal Citations**

M104 1940 c. 29.

M105 1931 c. 49.

M106 1931 c. 49.

M107 1915 c. 89.

**155 Directions for payment without deduction of tax.**

After section 51 of the Taxes Act 1988 there shall be inserted the following section—

**“51AA Commencement of direction under section 50 or 51.**

A direction under section 50 or 51 that any security shall be deemed to have been issued subject to the condition that the interest thereon shall be paid without deduction of tax may provide that the direction is to have effect in relation only to payments of interest made on or after such date as may be specified in the direction.”

**156 Paying and collecting agents etc.**

Schedule 29 to this Act (which amends the rules relating to paying and collecting agents) shall have effect.

**157 Stock lending fees.**

- (1) After section 129A of the Taxes Act 1988 (interest on cash collateral paid in connection with stock lending arrangements) there shall be inserted the following section—

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**“129B Stock lending fees.**

- (1) The income which, as income deriving from investments of a description specified in any of the relevant provisions, is eligible for relief from tax by virtue of that provision shall be taken to include any relevant stock lending fee.
  - (2) For the purposes of this section the relevant provisions are sections 592(2), 608(2)(a), 613(4), 614(3), 620(6) and 643(2).
  - (3) In this section “relevant stock lending fee”, in relation to investments of any description, means any amount, in the nature of a fee, which is payable in connection with an approved stock lending arrangement relating to investments which, but for any transfer under the arrangement, would be investments of that description.
  - (4) In this section “approved stock lending arrangement” has the same meaning as in Schedule 5A.”
- (2) This section has effect in relation to any arrangements entered into on or after 2nd January 1996.

**158 Transfers on death under the accrued income scheme.**

- (1) In section 710(5) of the Taxes Act 1988 (meaning of “transfer” in sections 711 to 728), after “or otherwise” there shall be inserted “, but—
  - (a) does not include the vesting of securities in a person’s personal representatives on his death; and”.
- (2) Subsection (1) of section 721 of that Act (transfer of securities on death) shall cease to have effect.
- (3) For subsection (2) of that section (transfers by personal representatives to legatees) there shall be substituted—
 

“(2) Where—

  - (a) an individual who is entitled to securities dies, and
  - (b) in the interest period in which the individual died, the securities are transferred by his personal representatives to a legatee,

section 713 shall not apply to the transfer.”
- (4) Subsection (4) of that section (interest period treated as ending with death) shall cease to have effect.
- (5) This section has effect as respects deaths on or after 6th April 1996.

**159 Manufactured payments, repos, etc.**

- (1) Sections 729, 737A(2)(b) and 786(4) of the Taxes Act 1988 (provisions applying to sale and repurchase agreements) shall cease to have effect except in relation to cases where the initial agreement to sell or transfer the securities or other property was made before the appointed day.
- (2) In section 737 of that Act—



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- (a) in subsection (5) (manufactured dividends paid to UK residents by non-residents), for the words from “a person resident in the United Kingdom” to “the United Kingdom recipient shall” there shall be substituted “ a United Kingdom recipient, that recipient shall ”; and
- (b) after that subsection there shall be inserted the following subsection—
  - “(5AAA) For the purposes of subsection (5) above a person who receives a manufactured dividend is a United Kingdom recipient if—
    - (a) he is resident in the United Kingdom; or
    - (b) he is not so resident but receives that dividend for the purposes of a trade carried on through a branch or agency in the United Kingdom.”
- (3) In section 737C of that Act (deemed manufactured payments), the following subsection shall be inserted after subsection (11A) in relation to cases where the initial agreement to sell the securities is made on or after the appointed day, that is to say—
  - “(11B) The preceding provisions of this section shall have effect in cases where paragraph 2, 3 or 4 of Schedule 23A would apply by virtue of section 737A(5) but for paragraph 5 of that Schedule as they have effect in a case where the paragraph in question is not disapplied by paragraph 5; and where—
    - (a) the gross amount of the deemed manufactured interest, or
    - (b) the gross amount of the deemed manufactured overseas dividend, falls to be calculated in such a case under subsection (8) or (11) above, it shall be so calculated by reference to the provisions of paragraph 3 or 4 of Schedule 23A that would have applied but for paragraph 5 of that Schedule.”
- (4) In sub-paragraph (3) of paragraph 4 of Schedule 23A to that Act (manufactured overseas dividends paid to UK residents by non-residents), for the words from “a person resident in the United Kingdom” to “the United Kingdom recipient shall” there shall be substituted “ a United Kingdom recipient, that recipient shall ”.
- (5) After that sub-paragraph there shall be inserted the following sub-paragraphs—
  - “(3A) For the purposes of sub-paragraph (3) above a person who receives a manufactured overseas dividend is a United Kingdom recipient if—
    - (a) he is resident in the United Kingdom; or
    - (b) he is not so resident but receives that dividend for the purposes of a trade carried on through a branch or agency in the United Kingdom.
  - (3B) Dividend manufacturing regulations may make provision, in relation to cases falling within sub-paragraph (3) above, for the amount of tax required under that sub-paragraph to be taken to be reduced, to such extent and for such purposes as may be determined under the regulations, by reference to amounts of overseas tax charged on, or in respect of—
    - (a) the making of the manufactured overseas dividend; or
    - (b) the overseas dividend of which the manufactured overseas dividend is representative.”
- (6) In sub-paragraph (7) of paragraph 4 of that Schedule (regulations for off-setting), for the words from “against” to “and account” in the words after paragraph (b) there shall be substituted “ in accordance with the regulations and to the prescribed extent, amounts falling within paragraph (a) of sub-paragraph (7AA) below against the sums

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falling within paragraph (b) of that sub-paragraph, and to account”; and after that sub-paragraph there shall be inserted the following sub-paragraph—

“(7AA) Those amounts and sums are—

- (a) amounts of overseas tax in respect of overseas dividends received by him in that chargeable period, amounts of overseas tax charged on, or in respect of, the making of manufactured overseas dividends so received by him and amounts deducted under sub-paragraph (2) above from any such manufactured overseas dividends; and
- (b) the sums due from him on account of the amounts deducted by him under sub-paragraph (2) above from the manufactured overseas dividends paid by him in that chargeable period.”

(7) In sub-paragraph (1) of paragraph 8 of that Schedule (power to modify provisions of Schedule)—

(a) before the “or” at the end of paragraph (a) there shall be inserted—

“(aa) such persons who receive, or become entitled to receive, manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed,”

and

(b) in the words after paragraph (b), for “paragraph 2, 3 or 4 above” there shall be substituted “ paragraphs 2 to 5 above ”.

(8) After sub-paragraph (1) of paragraph 8 of that Schedule there shall be inserted the following sub-paragraph—

“(1A) Dividend manufacturing regulations may provide, in relation to prescribed cases where a person makes or receives the payment of any amount representative of an overseas dividend, or is treated for any purposes of this Schedule or such regulations as a person making or receiving such a payment—

- (a) for any entitlement of that person to claim relief under Part XVIII to be extinguished or reduced to such extent as may be found under the regulations; and
- (b) for the adjustment, by reference to any provision having effect under the law of a territory outside the United Kingdom, of any amount falling to be taken, for any prescribed purposes of the Tax Acts or the 1992 Act, to be the amount paid or payable by or to any person in respect of any sale, repurchase or other transfer of the overseas securities to which the payment relates.”

(9) Subsections (2), (4) and (5) above have effect—

- (a) for the purposes of corporation tax, in relation to accounting periods ending after 31st March 1996; and
- (b) for the purposes of income tax, in relation to the year 1996-97 and subsequent years of assessment.

(10) In this section “the appointed day” means such day as the Treasury may by order appoint, and different days may be appointed under this subsection for different purposes.

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### Commencement Information

- I7** S. 159 partly in force at Royal assent see s. 159(9); s. 159(1)(3) in force (6.11.1996) by S.I. 1996/2646, art. 2

## 160 Investments in housing.

Schedule 30 to this Act (which makes provision conferring relief from corporation tax on companies that invest in housing) shall have effect.

## 161 Venture capital trusts: control of companies etc.

- (1) Schedule 28B to the Taxes Act 1988 (venture capital trusts: meaning of qualifying holdings) shall have effect, and be deemed always to have had effect, subject to the amendments in subsections (2) and (3) below.
- (2) In paragraph 9 (requirements as to subsidiaries etc. of the relevant company), the following shall be omitted—
  - (a) in sub-paragraph (1), the words “subject to sub-paragraph (2) below”; and
  - (b) sub-paragraph (2).
- (3) In paragraph 13 (interpretation), for sub-paragraphs (2) and (3) (“connected” and “control” to be construed in accordance with sections 839 and 416(2) to (6)) there shall be substituted the following sub-paragraphs—
  - “(2) For the purposes of paragraphs 5(2) and 9 above, the question whether a person controls a company shall be determined in accordance with subsections (2) to (6) of section 416 with the modification given by sub-paragraph (3) below.
  - (3) The modification is that, in determining whether a person controls a company, there shall be disregarded—
    - (a) his or any other person’s possession of, or entitlement to acquire, relevant fixed-rate preference shares of the company; and
    - (b) his or any other person’s possession of, or entitlement to acquire, rights as a loan creditor of the company.
  - (4) Section 839 shall apply for the purposes of this Schedule, but as if the reference in subsection (8) to section 416 were a reference to subsections (2) to (6) of section 416 with the modification given by sub-paragraph (3) above.
  - (5) For the purposes of sub-paragraph (3) above—
    - (a) relevant fixed-rate preference shares are fixed-rate preference shares that do not for the time being carry voting rights; and
    - (b) “fixed-rate preference shares” has the same meaning as in section 95.”

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### *Insurance policies*

#### **162 Qualifying life insurance policies: certification.**

- (1) Section 55 of the <sup>M108</sup>Finance Act 1995 (removal of certification requirements for qualifying policies with respect to any time on or after 5th May 1996 etc) shall have effect—
- (a) with the substitution for “5th May 1996”, wherever occurring, of “the appointed date”; and
  - (b) with the addition of the following subsection after subsection (8)—
 

“(9) In this section “the appointed date” means such date as may be specified for the purpose in an order made by the Board.”
- (2) In Schedule 15 to the Taxes Act 1988 (qualifying policies) paragraphs 24(2A) and 25(2) shall have effect with the substitution for “5th May 1996” of “the appointed date for the purposes of section 55 of the Finance Act 1995 (removal of certification requirements)”.

#### **Marginal Citations**

M108 1995 c. 4.

### *Insurance companies*

#### **163 Life assurance business losses.**

Schedule 31 to this Act, which makes provision about losses arising to insurance companies in the carrying on of life assurance business, shall have effect.

#### **164 Limits on relief for expenses.**

- (1) For subsections (2) to (5) of section 76 of the Taxes Act 1988 there shall be substituted the following subsections—
- “(2) Where, in the case of any such company, the amount mentioned in paragraph (a) of subsection (2A) below exceeds for any accounting period the amount mentioned in paragraph (b) of that subsection, the amount which by virtue of this section is to be deductible by way of management expenses for that period shall be equal to the basic deduction for that period reduced by the amount of the excess.
- (2A) Those amounts are—
- (a) the amount which would be the profits of the company’s life assurance business for that period if computed in accordance with the provisions applicable to Case I of Schedule D and adjusted in respect of losses; and
  - (b) the amount (including any negative amount) produced by deducting the following aggregate amount from the company’s relevant income for that period from its life assurance business, that is to say, the aggregate of—

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- (i) the basic deduction,
  - (ii) any non-trading deficit on the company's loan relationships which is produced for that period in relation to that business by a separate computation under paragraph 2 of Schedule 11 to the Finance Act 1996,
  - (iii) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to that period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for that period, and
  - (iv) any charges on income for that period so far as they consist in annuities or other annual payments that are referable to the company's life assurance business and, if they are not annuities, are payable by the company wholly or partly in satisfaction of claims under insurance policies.
- (2B) For the purposes of subsection (2A) above a company's relevant income for any accounting period from its life assurance business is the sum of the following—
- (a) the income and gains of the company's life assurance business for that accounting period; and
  - (b) the relevant franked investment income of the company for that period so far as it arises from assets held for the purposes of that business and is not included in the income and gains mentioned in paragraph (a) above.
- (2C) The adjustment in respect of losses that is to be made for any accounting period under paragraph (a) of subsection (2A) above is a deduction of the amount equal to the unused part of the sum which—
- (a) by reference to computations made in respect of the company's life assurance business in accordance with the provisions applicable to Case I of Schedule D, and
  - (b) disregarding section 434A(2),
- would fall, in the case of the company, to be set off under section 393 against the company's income for that period.
- (2D) For the purposes of subsection (2C) above, an amount is unused to the extent that it has not been taken into account for any previous accounting period in determining the amount by reference to which the following question was answered, namely, the question whether, and by how much, the amount deductible by virtue of this section by way of management expenses was less than the basic deduction.
- (5) Subject to paragraph 4(11) to (13) of Schedule 11 to the Finance Act 1996, where the basic deduction for any period exceeds the amount which for that period is to be deductible by virtue of this section by way of management expenses, the amount to be carried forward by virtue of section 75(3) (including the amount to be so carried forward for the purpose of computing the amount of the basic deduction for any period) shall be increased by the amount of the excess.”
- (2) In subsection (8) of that section—
- (a) after the definition of “authorised person” there shall be inserted the following definition—

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““basic deduction”, in relation to an accounting period of an insurance company, means the amount which, by virtue of this section, would be deductible by way of management expenses for that period but for subsection (2) above;”

and

- (b) after the definition of “recognised self-regulating organisation” there shall be inserted the following definition—

““relevant franked investment income”, in relation to any insurance company, means any franked investment income of the company in so far as it is not income the tax credits comprised in which may be claimed by the company under section 438(4) or 441A(7);”.

- (3) In paragraph 5 of Schedule 19AC to the Taxes Act 1988 (modification of section 76)—

- (a) in sub-paragraph (1), in the subsection (6B) treated as inserted in section 76, for “their” there shall be substituted “ its ” and the words “ and subsections (2) and (3)(b) above ” shall be omitted; and
- (b) after that sub-paragraph there shall be inserted the following sub-paragraph—

“(1A) In section 76 references to franked investment income shall be treated as being references to UK distribution income within the meaning of paragraph 5B of this Schedule.”

- (4) In section 56(4) of the Taxes Act 1988 (which contains a reference to the computation required by section 76(2) of that Act), for “by” there shall be substituted “ for the purposes of ”.

- (5) Subject to subsection (6) below, this section has effect in relation to accounting periods beginning on or after 1st January 1996.

- (6) Notwithstanding anything in the previous provisions of this section, section 76 of the Taxes Act 1988 has effect in relation to accounting periods beginning on or after 1st January 1996—

- (a) as if the reference in subsection (2D) of that section to a previous accounting period included a reference to an accounting period beginning before that date, and

- (b) in relation to such a previous accounting period, as if the references—

- (i) to the amount deductible by virtue of this section, and
- (ii) to the basic deduction,

were to be construed by reference to whatever provisions had effect in relation to that previous period for purposes corresponding to those of that section as amended by this section.

## **165 Annual payments under insurance policies: deductions.**

- (1) In section 337 of the Taxes Act 1988 (deductions in computing income), the following subsections shall be inserted after subsection (2)—

“(2A) In computing any profits or losses of a company in accordance with the provisions of this Act applicable to Case I of Schedule D, subsection (2)(b) above shall not prevent the deduction of any annuity or other annual payment

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which is payable by a company wholly or partly in satisfaction of any claim under an insurance policy in relation to which the company is the insurer.

(2B) The reference in subsection (2A) above to an annuity payable wholly or partly in satisfaction of a claim under an insurance policy shall be taken, in relation to an insurance company (within the meaning of Chapter I of Part XII), to include a reference to every annuity payable by that company; and the references in sections 338(2) and 434B(2) to an annuity paid wholly or partly as mentioned in subsection (2A) above shall be construed accordingly.”

(2) In section 338(2) of that Act, in the words after paragraph (b) (payments which are not charges on income), after “corporation tax” there shall be inserted “ nor any annuity or other annual payment which (without being so deductible) is paid wholly or partly as mentioned in section 337(2A) ”.

(3) In section 434B of that Act (treatment of interest and annuities in the case of insurance companies), subsection (1) shall cease to have effect; and in subsection (2), for the words from the beginning to “mentioned in subsection (1) above” there shall be substituted—

“(2) Nothing in section 337(2A) or 338(2) shall be construed as preventing any annuity or other annual payment which is paid wholly or partly as mentioned in section 337(2A)”.

(4) Subject to subsection (5) below, this section has effect in relation to accounting periods beginning on or after 1st January 1996.

(5) In relation to any accounting period beginning on or after 1st January 1996 but ending before 1st April 1996, this section shall have effect as if any reference in provisions inserted by this section to an annuity payable or paid by an insurance company included a reference to any such interest as was mentioned in section 434B(1) of the Taxes Act 1988 before its repeal by virtue of this section.

## **166 Equalisation reserves.**

Schedule 32 to this Act (which makes provision about the tax treatment of equalisation reserves maintained by insurance companies) shall have effect.

## **167 Industrial assurance business.**

(1) In section 432 of the Taxes Act 1988, subsection (2) (industrial assurance business treated as separate business for the purposes of Chapter I of Part XII) shall cease to have effect.

(2) In section 432A(2) of the Taxes Act 1988, for paragraphs (d) and (e) (different categories of basic life assurance and general annuity business, including and not including industrial assurance business), there shall be substituted the following paragraph—

“(d) basic life assurance and general annuity business; and”.

(3) In section 86 of the <sup>M109</sup>Finance Act 1989 (spreading of relief for acquisition expenses)

—  
(a) in subsection (1)(a), for “in respect of industrial life assurance business carried on by the company” there shall be substituted “ for persons who collect premiums from house to house ”; and

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- (b) in subsection (2), for “in respect of industrial life assurance business” there shall be substituted “for persons who collect premiums from house to house”.
- (4) In section 832 of the Taxes Act 1988 (interpretation), in the definition of “industrial assurance business” for “has” there shall be substituted “means any such business carried on before the day appointed for the coming into force of section 167(4) of the Finance Act 1996 as was industrial assurance business within”.
- (5) In Schedule 14 to the Taxes Act 1988 (ancillary provisions about relief in respect of life assurance premiums), in paragraph 8, at the beginning of sub-paragraph (4) (policy which is varied so as to increase benefits, etc. to be treated as issued after 13th March 1984) there shall be inserted “Subject to sub-paragraph (8) below,”.
- (6) After sub-paragraph (7) of that paragraph there shall be inserted the following sub-paragraph—
  - “(8) Sub-paragraph (4) above does not apply in the case of a variation so as to increase the benefits secured, if the variation is made—
    - (a) on or after such day as the Board may by order appoint, and
    - (b) in consideration of a change in the method of payment of premiums from collection by a person collecting premiums from house to house to payment by a different method.”
- (7) In Schedule 15 to the Taxes Act 1988 (qualifying policies)—
  - (a) in paragraph 1(6) (calculation of amount included in premiums of whole life and term insurances in respect of their payment otherwise than annually), for “and if the policy is issued in the course of an industrial assurance business,” there shall be substituted “and if the policy provides for payment otherwise than annually without providing for the amount of the premiums if they are paid annually,”; and
  - (b) in paragraph 2(2) (the equivalent calculation for endowment assurances), for “issued in the course of an industrial assurance business” there shall be substituted “that provides for the payment of premiums otherwise than annually without providing for the amount of the premiums if they are paid annually,”.
- (8) After paragraph 8 of that Schedule there shall be inserted the following paragraph—
  - “8A (1) Paragraphs 7 and 8 above shall have effect in relation to any policy issued on or after the appointed day as if the references to the issue of a policy in the course of an industrial assurance business were references to the issue of a policy by any company in a case in which—
    - (a) the company, before that day and in the course of such a business, issued any policy which was a qualifying policy by virtue of either of those paragraphs; and
    - (b) the policies which on 28th November 1995 were being offered by the company as available to be issued included policies of the same description as the policy issued on or after the appointed day.
  - (2) In this paragraph “the appointed day” means such day as the Board may by order appoint.”



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- (9) In paragraph 18(3) of that Schedule (certain variations of a policy not to affect whether policy is a qualifying policy), after paragraph (b) there shall be inserted “or
- (c) any variation so as to increase the benefits secured or reduce the premiums payable which is effected—
- (i) on or after such day as the Board may by order appoint, and
- (ii) in consideration of a change in the method of payment of premiums from collection by a person collecting premiums from house to house to payment by a different method.”
- (10) Subsections (1) to (3) above have effect in relation to accounting periods beginning on or after 1st January 1996.
- (11) Subsection (4) above shall come into force on such day as the Board may by order appoint.
- (12) Subsection (7) above shall have effect in relation to policies issued on or after such day as the Board may by order appoint.

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**Subordinate Legislation Made**

**P4** [S. 167\(11\)\(12\)](#) power fully exercised: 1.12.2001 appointed by [S.I. 2001/3643](#), **art. 2(a)**

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**Marginal Citations**

**M109** [1989 c. 26](#).

## 168 Capital redemption business.

- (1) For subsection (3) of section 458 of the Taxes Act 1988 (meaning of capital redemption business) there shall be substituted the following subsection—
- “(3) In this section “capital redemption business” means any business in so far as it—
- (a) is insurance business for the purposes of the <sup>M110</sup>Insurance Companies Act 1982, but not life assurance business; and
- (b) consists in effecting on the basis of actuarial calculations, and carrying out, contracts under which, in return for one or more fixed payments, a sum or series of sums of a specified amount become payable at a future time or over a period.”
- (2) Schedule 33 to this Act (which makes provision for the application of the I minus E basis of charging tax to companies carrying on capital redemption business) shall have effect.
- (3) In Chapter I of Part XII of the Taxes Act 1988, after section 458 (capital redemption business) there shall be inserted the following section—

**“458A Capital redemption business: power to apply life assurance provisions.**

- (1) The Treasury may by regulations provide for the life assurance provisions of the Corporation Tax Acts to have effect in relation to companies carrying on

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capital redemption business as if capital redemption business were, or were a category of, life assurance business.

- (2) Regulations under this section may provide that the provisions applied by the regulations are to have effect as respects capital redemption business with such modifications and exceptions as may be provided for in the regulations.
- (3) Regulations under this section may—
  - (a) make different provision for different cases;
  - (b) include such incidental, supplemental, consequential and transitional provision (including provision modifying provisions of the Corporation Tax Acts other than the life assurance provisions) as the Treasury consider appropriate; and
  - (c) include retrospective provision.
- (4) In this section references to the life assurance provisions of the Corporation Tax Acts are references to the following—
  - (a) the provisions of this Chapter so far as they relate to life assurance business or companies carrying on such business; and
  - (b) any other provisions of the Corporation Tax Acts making separate provision by reference to whether or not the business of a company is or includes life assurance business or any category of insurance business that includes life assurance business.
- (5) In this section “capital redemption business” has the same meaning as in section 458.”
- (4) In section 539(3) of that Act, in the definition of “capital redemption policy” for “insurance” there shall be substituted “contract”.
- (5) In section 553(10) of that Act, in paragraph (a) of the definition of “new offshore capital redemption policy”, for “an insurance” there shall be substituted “a contract”.
- (6) Subsection (1) above shall have effect as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M111</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions), and subsections (4) and (5) above shall have effect as respects contracts effected on or after that day.

#### **Marginal Citations**

**M110** 1982 c. 50.

**M111** 1994 c. 9.

### **169 Provisional repayments in connection with pension business.**

- (1) Schedule 19AB to the Taxes Act 1988 (pension business: payments on account of tax credits and deducted tax) shall be amended in accordance with the provisions of Part I of Schedule 34 to this Act.
- (2) Schedule 19AC to the Taxes Act 1988 (modification of that Act in relation to overseas life insurance companies) shall be amended in accordance with the provisions of Part II of Schedule 34 to this Act.

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- (3) The amendments made by Schedule 34 to this Act shall have effect in relation to provisional repayment periods, within the meaning of Schedule 19AB to the <sup>M112</sup>Taxes Act 1988, falling in accounting periods ending on or after the day appointed under section 199 of the Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).

**Marginal Citations**

[M112 1994 c. 9.](#)

**170 Time for amending and enquiring into returns.**

- (1) After section 11AB of the <sup>M113</sup>Taxes Management Act 1970 there shall be inserted the following sections—

**“11AC Modifications of sections 11AA and 11AB in relation to non-annual accounting of general insurance business.**

- (1) This section applies in any case where a company carrying on insurance business in any period delivers a return for that period under section 11 of this Act which is based wholly or partly on accounts which the company is required or permitted to draw up using the method described in paragraph 52 of Schedule 9A to the <sup>M114</sup>Companies Act 1985 (accounting for general insurance business on a non-annual basis).
- (2) Where this section applies, section 11AA(2) of this Act shall have effect as if after paragraph (b) there were added “and
- (c1) where a company has delivered a return which is based wholly or partly on accounts drawn up as mentioned in section 11AC(1) of this Act, then, at any time before the end of the period of twelve months beginning with the date on which any particular technical provision constituted in the case of those accounts as described in paragraph 52 of Schedule 9A to the <sup>M115</sup>Companies Act 1985 is replaced as described in sub-paragraph (4) of that paragraph, the company may by notice to an officer of the Board so amend its self-assessment as to give effect to any amendments to the return—
- (i) which arise from the replacement of that technical provision, and
- (ii) which the company has notified to such an officer.”
- (3) Where this section applies, section 11AB of this Act shall have effect—
- (a) as if in subsection (1)(b) after “subsection (2)(b)” there were inserted “or (c1)”; and
- (b) as if in subsection (2) for the words from “is” to the end of paragraph (b) there were substituted—
- (“ in the case of a return (whenever delivered) which is based wholly or partly on accounts drawn up as mentioned in section 11AC(1) of this Act, is whichever of the following periods ends the later, that is to say—

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- (i) the period of two years beginning with the date (or, if there is more than one such date, the latest date) on which any technical provision constituted in the case of those accounts as described in paragraph 52 of Schedule 9A to the Companies Act 1985 is replaced as mentioned in subparagraph (4) of that paragraph; or
  - (ii) the period ending with the quarter day next following the first anniversary of the day on which the return was delivered; and
- (b1) in the case of an amendment of such a return—
- (i) if the amendment is made on or before the filing date, is the period of twelve months beginning with that date; or
  - (ii) if the amendment is made after that date, is the period ending with the quarter day next following the first anniversary of the day on which the amendment was made;”.

#### **11AD Modifications of sections 11AA and 11AB for insurance companies with non-annual actuarial investigations.**

- (1) This section applies in any case where a return under section 11 of this Act is delivered by an insurance company which is permitted by an order under section 68 of the <sup>M116</sup>Insurance Companies Act 1982 to cause investigations to be made into its financial condition less frequently than is required by section 18 of that Act.
- (2) Where this section applies, section 11AA(2) of this Act shall have effect as if, after paragraph (b), there were added “and
- (c2) where a company falling within section 11AD(1) of this Act has delivered a return for any period, then, at any time before the end of the period of twelve months beginning with the date as at which the relevant investigation is carried out, that is to say—
- (i) if the return is for a period as at the end of which there is carried out an investigation under section 18 of the <sup>M117</sup>Insurance Companies Act 1982 into the financial condition of the company, that investigation, or
  - (ii) if the return is not for such a period, the first such investigation to be made into the financial condition of the company as at the end of a subsequent period,
- the company may by notice to an officer of the Board so amend its self-assessment as to give effect to any amendments to its return which arise from that investigation and which the company has notified to such an officer.”
- (3) Where this section applies, section 11AB of this Act shall have effect—
- (a) as if in subsection (1)(b) after “subsection (2)(b)” there were inserted “or (c2)”; and
  - (b) as if in subsection (2) for the words from “is” to the end of paragraph (b) there were substituted—
  - (“ in the case of a return delivered at any time by a company falling within section 11AD(1) of this Act, is the period of two years beginning with the date as at which the relevant investigation, as defined in section 11AA(2)(c2) of this Act, is carried out; and

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- (b2) in the case of an amendment of such a return—
  - (i) if the amendment is made on or before the filing date, is the period of twelve months beginning with that date; or
  - (ii) if the amendment is made after that date, is the period ending with the quarter day next following the first anniversary of the day on which the amendment was made;”.

### **11AE Modifications of sections 11AA and 11AB for friendly societies with non-annual actuarial investigations.**

- (1) This section applies in any case where a return under section 11 of this Act is delivered by a friendly society which is required by section 47 of the <sup>M118</sup>Friendly Societies Act 1992 to cause an investigation to be made into its financial condition at least once in every period of three years.
- (2) Where this section applies, section 11AA(2) of this Act shall have effect as if, after paragraph (b), there were added “and
  - (c3) where a friendly society falling within section 11AE(1) of this Act has delivered a return for any period, then, at any time before the end of the period of fifteen months beginning with the date as at which the relevant investigation is carried out, that is to say—
    - (i) if the return is for a period as at the end of which there is carried out an investigation under section 47 of the <sup>M119</sup>Friendly Societies Act 1992 into the financial condition of the society, that investigation, or
    - (ii) if the return is not for such a period, the first such investigation to be made into the financial condition of the society as at the end of a subsequent period,the society may by notice to an officer of the Board so amend its self-assessment as to give effect to any amendments to its return which arise from that investigation and which the society has notified to such an officer.”
- (3) Where this section applies, section 11AB of this Act shall have effect—
  - (a) as if in subsection (1)(b) after “subsection (2)(b)” there were inserted “or (c3)”; and
  - (b) as if in subsection (2) for the words from “is” to the end of paragraph (b) there were substituted—
  - (“ in the case of a return delivered at any time by a friendly society falling within section 11AE(1) of this Act, is the period of twenty seven months beginning with the date as at which the relevant investigation, as defined in section 11AA(2)(c3) of this Act, is carried out; and
  - (b3) in the case of an amendment of such a return—
    - (i) if the amendment is made on or before the filing date, is the period of twelve months beginning with that date; or
    - (ii) if the amendment is made after that date, is the period ending with the quarter day next following the first anniversary of the day on which the amendment was made;”.

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- (2) The amendment made by subsection (1) above shall have effect as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M120</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).

#### **Marginal Citations**

**M113** 1970 c. 9.

**M114** 1985 c. 6.

**M115** 1985 c. 6.

**M116** 1982 c. 50.

**M117** 1982 c. 50.

**M118** 1992 c. 40.

**M119** 1992 c. 40.

**M120** 1994 c. 9.

### *Friendly societies*

#### **171 Life or endowment business.**

- (1) In section 466 of the Taxes Act 1988 (interpretation of Chapter II of Part XII) for subsection (1) (meaning of “life or endowment business”) there shall be substituted—

“(1) In this Chapter “life or endowment business” means, subject to subsections (1A) and (1B) below,—

- (a) any business within Class I, II or III of Head A of Schedule 2 to the <sup>M121</sup>Friendly Societies Act 1992;
- (b) pension business;
- (c) any other life assurance business;
- (d) any business within Class IV of Head A of that Schedule, if—
  - (i) the contract is one made before 1st September 1996; or
  - (ii) the contract is one made on or after 1st September 1996 and the effecting and carrying out of the contract also constitutes business within Class I, II or III of Head A of that Schedule.

(1A) Life or endowment business does not include the issue, in respect of a contract made before 1st September 1996, of a policy affording provision for sickness or other infirmity (whether bodily or mental), unless—

- (a) the policy also affords assurance for a gross sum independent of sickness or other infirmity;
- (b) not less than 60 per cent. of the amount of the premiums is attributable to the provision afforded during sickness or other infirmity; and
- (c) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum.

(1B) Life or endowment business does not include the assurance of any annuity the consideration for which consists of sums obtainable on the maturity, or on the surrender, of any other policy of assurance issued by the friendly society, being a policy of assurance forming part of the tax exempt life or endowment business of the friendly society.”

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- (2) In subsection (2) of that section (other definitions) there shall be inserted at the appropriate places—
- “(a) “insurance company” shall be construed in accordance with section 431;”;
  - “(b) “long term business” shall be construed in accordance with section 431;”.
- (3) In section 266 of that Act (life assurance premium relief) in subsection (6) (deduction from total income where relief given for part of certain payments to friendly societies) after paragraph (b) there shall be inserted “and
- (c) the insurance or contract is not excluded by subsection (6A) below;”.
- (4) After that subsection there shall be inserted—
- “(6A) For the purposes of subsection (6)(c) above, an insurance or contract is excluded by this subsection if it is made on or after 1st September 1996 and affords provision for sickness or other infirmity (whether bodily or mental), unless—
- (a) it also affords assurance for a gross sum independent of sickness or other infirmity;
  - (b) not less than 60 per cent. of the amount of the premiums is attributable to the provision afforded during sickness or other infirmity; and
  - (c) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum.”
- (5) In section 463(1) of that Act (Corporation Tax Acts to apply to friendly societies’ life or endowment business as they apply to insurance companies’ mutual life assurance business) after “mutual life assurance business” there shall be inserted “ (or other long term business) ”.
- (6) The amendment made by subsection (5) above shall have effect in relation to accounting periods ending on or after 1st September 1996.

**Marginal Citations**

M121 1992 c. 40.

*Personal pension schemes*

**172 Return of contributions on or after death of member.**

- (1) In section 633(1) of the Taxes Act 1988 (Board not to approve a personal pension scheme which makes provision for any benefit other than those specified in paragraphs (a) to (e)) in paragraph (e) (payment on or after the death of a member of a lump sum satisfying the conditions in section 637A) for the words following “a lump sum” there shall be substituted “ with respect to which the conditions in section 637A (return of contributions) are satisfied ”.
- (2) For section 637A of that Act (return of contributions on or after death of member) there shall be substituted—

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**“637A Return of contributions on or after death of member.**

- (1) The lump sum payable under the arrangements in question (or, where two or more lump sums are so payable, those lump sums taken together) must represent no more than the return of contributions together with reasonable interest on contributions or bonuses out of profits, after allowing for—
- (a) any income withdrawals, and
  - (b) any purchases of annuities such as are mentioned in section 636.

To the extent that contributions are invested in units under a unit trust scheme, the lump sum (or lump sums) may represent the sale or redemption price of the units.

- (2) A lump sum must be payable only if, in the case of the arrangements in question,—
- (a) no such annuity as is mentioned in section 634 has been purchased by the member;
  - (b) no such annuity as is mentioned in section 636 has been purchased in respect of the relevant interest; and
  - (c) no election in accordance with subsection (5)(a) of section 636 has been made in respect of the relevant interest.
- (3) Where the member’s death occurs after the date which is his pension date in relation to the arrangements in question, a lump sum must not be payable more than two years after the death unless, in the case of that lump sum, the person entitled to such an annuity as is mentioned in section 636 in respect of the relevant interest—
- (a) has elected in accordance with section 636A to defer the purchase of an annuity; and
  - (b) has died during the period of deferral.
- (4) In this section “the relevant interest” means the interest, under the arrangements in question, of the person to whom or at whose direction the payment in question is made, except where there are two or more such interests, in which case it means that one of them in respect of which the payment is made.
- (5) Where, under the arrangements in question, there is a succession of interests, any reference in subsection (2) or (3) above to the relevant interest includes a reference to any interest (other than that of the member) in relation to which the relevant interest is a successive interest.”

- (3) This section—
- (a) has effect in relation to approvals, of schemes or amendments, given under Chapter IV of Part XIV of the Taxes Act 1988 (personal pension schemes) after the passing of this Act; and
  - (b) does not affect any approval previously given.



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### *Participants in close companies*

#### **173 Loans to participators etc.**

- (1) Section 419 of the Taxes Act 1988 (loans to participators etc.) shall be amended in accordance with subsections (2) to (4) below.
- (2) For subsection (3) (time when tax becomes due) there shall be substituted the following subsection—
  - “(3) Tax due by virtue of this section in relation to any loan or advance shall be due and payable on the day following the expiry of nine months from the end of the accounting period in which the loan or advance was made.”
- (3) After subsection (4) (relief in respect of repayment) there shall be inserted the following subsection—
  - “(4A) Where the repayment of the whole or any part of a loan or advance occurs on or after the day on which tax by virtue of this section becomes due in relation to that loan or advance, relief in respect of the repayment shall not be given under subsection (4) above at any time before the expiry of nine months from the end of the accounting period in which the repayment occurred.”
- (4) In subsection (6) (application to loans and advances to certain companies who are participators etc.), the words “ and to a company not resident in the United Kingdom ” shall be omitted.
- (5) In section 826(4) of that Act (interest on repayment of tax by virtue of section 419), for paragraph (a) there shall be substituted the following paragraph—
  - “(a) the date when the entitlement to relief in respect of the repayment accrued, that is to say—
    - (i) where the repayment of the loan or advance (or part thereof) occurred on or after the day mentioned in section 419(4A), the date nine months after the end of that accounting period; and
    - (ii) in any other case, the date nine months after the end of the accounting period in which the loan or advance was made;

or”.
- (6) This section has effect in relation to any loan or advance made in an accounting period ending on or after 31st March 1996.

#### **174 Attribution of gains to participators in non-resident companies.**

- (1) Section 13 of the <sup>M122</sup>Taxation of Chargeable Gains Act 1992 (attribution of gains to members of non-resident companies) shall be amended in accordance with subsections (2) to (9) below.
- (2) In subsection (2) (persons subject to charge on gain to company), for “holds shares” there shall be substituted “ is a participator ”.
- (3) For subsections (3) and (4) (part of gain attributed to person subject to charge) there shall be substituted the following subsections—

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- “(3) That part shall be equal to the proportion of the gain that corresponds to the extent of the participator’s interest as a participator in the company.
- (4) Subsection (2) above shall not apply in the case of any participator in the company to which the gain accrues where the aggregate amount falling under that subsection to be apportioned to him and to persons connected with him does not exceed one twentieth of the gain.”
- (4) In subsection (5), paragraph (a) (section not to apply where gain distributed within two years) shall be omitted; and after that subsection there shall be inserted the following subsection—
- “(5A) Where—
- (a) any amount of capital gains tax is paid by a person in pursuance of subsection (2) above, and
  - (b) an amount in respect of the chargeable gain is distributed (either by way of dividend or distribution of capital or on the dissolution of the company) within 2 years from the time when the chargeable gain accrued to the company,
- that amount of tax (so far as neither reimbursed by the company nor applied as a deduction under subsection (7) below) shall be applied for reducing or extinguishing any liability of that person to income tax in respect of the distribution or (in the case of a distribution falling to be treated as a disposal on which a chargeable gain accrues to that person) to any capital gains tax in respect of the distribution.”
- (5) In subsection (7) (deduction of tax paid in computing gain on shares in the company)—
- (a) for “not reimbursed by the company” there shall be inserted “ neither reimbursed by the company nor applied under subsection (5A) above for reducing any liability to tax) ”; and
  - (b) for “the shares by reference to which the tax was paid” there shall be substituted “ any asset representing his interest as a participator in the company. ”
- (6) After subsection (7) there shall be inserted the following subsection—
- “(7A) In ascertaining for the purposes of subsection (5A) or (7) above the amount of capital gains tax or income tax chargeable on any person for any year on or in respect of any chargeable gain or distribution—
- (a) any such distribution as is mentioned in subsection (5A)(b) above and falls to be treated as income of that person for that year shall be regarded as forming the highest part of the income on which he is chargeable to tax for the year;
  - (b) any gain accruing in that year on the disposal by that person of any asset representing his interest as a participator in the company shall be regarded as forming the highest part of the gains on which he is chargeable to tax for that year;
  - (c) where any such distribution as is mentioned in subsection (5A)(b) above falls to be treated as a disposal on which a gain accrues on which that person is so chargeable, that gain shall be regarded as forming the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (b) above; and

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- (d) any gain treated as accruing to that person in that year by virtue of subsection (2) above shall be regarded as the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (c) above.”
- (7) In subsection (9) (cases where person charged is a company)—
- (a) for “the person owning any of the shares in the company” there shall be substituted “ a person who is a participator in the company ”; and
- (b) for the words from “to the shares” onwards there shall be substituted “ to the participating company’s interest as a participator in the company to which the gain accrues shall be further apportioned among the participators in the participating company according to the extent of their respective interests as participators, and subsection (2) above shall apply to them accordingly in relation to the amounts further apportioned, and so on through any number of companies. ”
- (8) In subsection (10) (application to trustees), for “owning shares in the company” there shall be substituted “ who are participators in the company, or in any company amongst the participators in which the gain is apportioned under subsection (9) above, ”.
- (9) After subsection (11) there shall be inserted the following subsections—
- “(12) In this section “participator”, in relation to a company, has the meaning given by section 417(1) of the Taxes Act for the purposes of Part XI of that Act (close companies).
- (13) In this section—
- (a) references to a person’s interest as a participator in a company are references to the interest in the company which is represented by all the factors by reference to which he falls to be treated as such a participator; and
- (b) references to the extent of such an interest are references to the proportion of the interests as participators of all the participators in the company (including any who are not resident or ordinarily resident in the United Kingdom) which on a just and reasonable apportionment is represented by that interest.
- (14) For the purposes of this section, where—
- (a) the interest of any person in a company is wholly or partly represented by an interest which he has under any settlement (“his beneficial interest”), and
- (b) his beneficial interest is the factor, or one of the factors, by reference to which that person would be treated (apart from this subsection) as having an interest as a participator in that company,
- the interest as a participator in that company which would be that person’s shall be deemed, to the extent that it is represented by his beneficial interest, to be an interest of the trustees of the settlement (and not of that person), and references in this section, in relation to a company, to a participator shall be construed accordingly.
- (15) Any appeal under section 31 of the Management Act involving any question as to the extent for the purposes of this section of a person’s interest as a participator in a company shall be to the Special Commissioners.”

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(10) In paragraph 1(3) of Schedule 5 to the <sup>M123</sup>Taxation of Chargeable Gains Act 1992 (application of section 86 to section 13 gains)—

- (a) in paragraph (a), for “hold shares in a company which originate” there shall be substituted “are participators in a company in respect of property which originates”;
- (b) in paragraph (b), for “the shares” there shall be substituted “so much of their interest as participators as arises from that property”; and
- (c) at the end there shall be added—

“Subsections (12) and (13) of section 13 shall apply for the purposes of this sub-paragraph as they apply for the purposes of that section.”

(11) This section applies to gains accruing on or after 28th November 1995.

#### **Marginal Citations**

**M122** 1992 c. 12.

**M123** 1992 c. 12.

### *Cancellation of tax advantages*

#### **175 Transactions in certain securities.**

(1) In section 704 of the Taxes Act 1988 (which relates to the cancellation of tax advantages and specifies the circumstances mentioned in section 703(1)) in paragraph D(2)(b) (companies which do not satisfy the conditions there specified with respect to their shares or stocks) for “are authorised to be dealt in on the Stock Exchange, and are so dealt in (regularly or from time to time)” there shall be substituted “are listed in the Official List of the Stock Exchange, and are dealt in on the Stock Exchange regularly or from time to time”.

[<sup>F25</sup>(2) The reference in paragraph D(2)(b) of section 704 of the Taxes Act 1988 to being listed in the Official List of the Stock Exchange and being dealt in on the Stock Exchange regularly or from time to time shall be taken to include a reference to being dealt in on the Unlisted Securities Market regularly or from time to time, but this subsection is subject to subsection (3) below.

<sup>F25</sup>(3) Subsection (2) above—

- (a) so far as relating to sub-paragraph (2) of paragraph D of section 704 of the Taxes Act 1988 as it applies for the purposes of sub-paragraph (1) of that paragraph or paragraph E of that section, shall not have effect where the relevant transaction takes place after the date on which the Unlisted Securities Market closes;
- (b) so far as relating to paragraph D of that section as it applies for the purposes of section 210(3) or 211(2) of that Act (which relate to bonus issues following, and other matters to be treated or not treated as, repayment of share capital) shall not have effect—
  - (i) in the case of section 210(3), in relation to share capital issued after that date; or
  - (ii) in the case of section 211(2), in relation to distributions made after that date.]

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- (4) [F26] Except as provided by subsection (3) above, this section—
- (a) so far as relating to sub-paragraph (2) of paragraph D of section 704 of the Taxes Act 1988 as it applies for the purposes of sub-paragraph (1) of that paragraph or paragraph E of that section, shall have effect where the relevant transaction takes place after the passing of this Act; and
  - (b) so far as relating to paragraph D of that section as it applies for the purposes of section 210(3) or 211(2) of that Act, shall have effect—
    - (i) in the case of section 210(3), in relation to share capital issued after the passing of this Act; or
    - (ii) in the case of section 211(2), in relation to distributions made after the passing of this Act.
- (5) In this section “the relevant transaction” means—
- (a) the transaction in securities mentioned in paragraph (b) of section 703(1) of the Taxes Act 1988, or
  - (b) the first of the two or more such transactions mentioned in that paragraph, as the case may be.

#### Textual Amendments

- F25** S. 175(2)(3) repealed (with effect as mentioned in Sch. 41 Pt. V(31), Note in the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(31)**
- F26** Words in s. 175(4) repealed (with effect as mentioned in Sch. 41 Pt. V(31), Note in the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(31)**

### *Chargeable gains: reliefs*

#### **176 Retirement relief: age limits.**

- (1) In each of sections 163 and 164 of, and paragraph 5 of Schedule 6 to, the <sup>M124</sup>Taxation of Chargeable Gains Act 1992 (retirement relief), for “the age of 55”, wherever occurring, there shall be substituted “ the age of 50 ”.
- (2) The amendments made by this section shall apply in relation to disposals on or after 28th November 1995.

#### Marginal Citations

**M124** 1992 c. 12.

#### **177 Reinvestment relief on disposal of qualifying corporate bond.**

Section 164A of the Taxation of Chargeable Gains Act 1992 (re-investment relief) shall have effect, and be deemed always to have had effect, as if the following subsections were inserted after subsection (2)—

- “(2A) Where the chargeable gain referred to in subsection (1)(a) above is one which (apart from this section) would be deemed to accrue by virtue of section 116(10) (b)—

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- (a) any reduction falling to be made by virtue of subsection (2)(a) above shall be treated as one made in the consideration mentioned in section 116(10)(a), instead of in the consideration for the disposal of the asset disposed of; but
- (b) if the disposal on which that gain is deemed to accrue is a disposal of only part of the new asset, it shall be assumed, for the purpose only of making a reduction affecting the amount of that gain—
  - (i) that the disposal is a disposal of the whole of a new asset,
  - (ii) that the gain accruing on that disposal relates to an old asset consisting in the corresponding part of what was in fact the old asset, and
  - (iii) that the corresponding part of the consideration deemed to be given for what was in fact the old asset is taken to be the consideration by reference to which the amount of that gain is computed;

and in this subsection “new asset” and “old asset” have the same meanings as in section 116.

(2B) Where a chargeable gain accrues in accordance with subsection (12) of section 116, this Chapter shall have effect—

- (a) as if that gain were a gain accruing on the disposal of an asset; and
- (b) in relation to that deemed disposal, as if references in this Chapter to the consideration for the disposal were references to the sum of money falling, apart from this Chapter, to be used in computing the gain accruing under that subsection.”

### *Special cases*

#### **178 Sub-contractors in the construction industry.**

(1) In section 566 of the Taxes Act 1988 (powers to make regulations in connection with the provisions relating to sub-contractors in the construction industry), after subsection (2) there shall be inserted the following subsection—

“(2A) The Board may by regulations make provision—

- (a) for the issue of documents (to be known as “registration cards”) to persons who are parties, as sub-contractors, to any contract relating to construction operations or who are likely to become such parties;
- (b) for a registration card to contain all such information about the person to whom it is issued as may be required, for the purposes of any regulations under this section, by a person making payments under any such contract;
- (c) for a registration card to take such form and to be valid for such period as may be prescribed by the regulations;
- (d) for the renewal, replacement or cancellation of a registration card;
- (e) for requiring the surrender of a registration card in such circumstances as may be specified in the regulations;
- (f) for requiring the production of a registration card to such persons and in such circumstances as may be so specified;
- (g) for requiring any person who—

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- (i) makes or is proposing to make payments to which section 559 applies, and
- (ii) is a person to whom a registration card has to be produced under the regulations,

to take steps that ensure that it is produced to him and that he has an opportunity of inspecting it for the purpose of checking that it is a valid registration card issued to the person required to produce it.

(2B) A person who fails to comply with an obligation imposed on him by virtue of subsection (2A)(g) above shall be liable to a penalty not exceeding £3,000.

(2C) Subject to subsection (2D) below, where—

- (a) a person who is a party to a contract relating to any construction operations (“the contractor”) makes or is proposing to make payments to which section 559 applies,
- (b) the contractor is required by regulations under this section to make statements about another party to the contract (“the sub-contractor”) in any return, certificate or other document,
- (c) a registration card containing the information to be stated should have been produced, in accordance with any such regulations, to the contractor, and
- (d) the statements made in the return, certificate or other document, so far as relating to matters the information about which should have been obtainable from the card, are inaccurate or incomplete in any material respect,

the contractor shall be liable to a penalty not exceeding £3,000.

(2D) A person shall not be liable to a penalty under subsection (2C) above if—

- (a) a valid registration card issued to the sub-contractor, or a document which the contractor had reasonable grounds for believing to be such a card, was produced to the contractor and inspected by him before the statements in question were made; and
- (b) the contractor took all such steps as were reasonable, in addition to the inspection of that card, for ensuring that the statements were accurate and complete.

(2E) A person liable to a penalty under subsection (2C) above shall not, by reason only of the matters in respect of which he is liable to a penalty under that subsection, be liable to any further penalty under section 98 of the Management Act.

(2F) Regulations under this section may make different provision for different cases.”

(2) In the second column of the Table in section 98 of the <sup>M125</sup>Taxes Management Act 1970 (penalties in respect of certain information provisions), for the entry relating to regulations under section 566(1) and (2) of the Taxes Act 1988 there shall be substituted the following entry—

“regulations under section 566(1), (2) or (2A);”.

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**Marginal Citations**

M125 1970 c. 9.

**179 Roll-over relief in respect of ships.**

Schedule 35 to this Act (which amends sections 33A to 33F of the <sup>M126</sup>Capital Allowances Act 1990) shall have effect.

**Marginal Citations**

M126 1990 c. 1.

**180 Scientific research expenditure: oil licences.**

- (1) The Capital Allowances Act 1990 shall have effect, and be deemed always to have had effect, with the following sections inserted after section 138 (assets ceasing to belong to traders)—

**“138A Disposal of oil licences etc.**

- (1) For the purposes of section 138 where—
- (a) a person (“the transferor”) disposes of any interest in an oil licence to another (“the transferee”), and
  - (b) part of the value of that interest is attributable to any allowable exploration expenditure incurred by the transferor,
- that disposal shall be deemed (subject to section 138B) to be a disposal by which an asset representing the allowable exploration expenditure to which that part of the value is attributable ceases to belong to the transferor.
- (2) Section 138 shall have effect in relation to the disposal of an interest in an oil licence, to the extent that the disposal is treated by virtue of subsection (1) above as a disposal of an asset representing allowable exploration expenditure, as if the disposal value of the asset were an amount equal to such part of the transferee’s expenditure on acquiring the interest as it is just and reasonable to attribute to the part of the value of that interest that is attributable to the allowable exploration expenditure.
- (3) In this section and section 138B references to allowable exploration expenditure are references to any allowable scientific research expenditure of a capital nature incurred on mineral exploration and access.
- (4) In this section and section 138B—
- “foreign oil concession” means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;
- “interest” in relation to an oil licence, includes, where there is an agreement which—
- (a) relates to oil from the whole or any part of the area to which the licence applies, and



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- (b) was made before the extraction of the oil to which it relates,  
any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;  
“mineral exploration and access” has the same meaning as in Part IV;  
“oil”—  
(a) except in relation to a UK licence, means any petroleum; and  
(b) in relation to such a licence, has the same meaning as in Part I of the <sup>M127</sup>Oil Taxation Act 1975;  
“oil licence” means any UK licence or foreign oil concession;  
“overseas petroleum” means any petroleum that exists in its natural condition at a place to which neither the <sup>M128</sup>Petroleum (Production) Act 1934 nor the <sup>M129</sup>Petroleum (Production) Act (Northern Ireland) 1964 applies;  
“petroleum” has the <sup>M130</sup>same meaning as in the Petroleum (Production) Act 1934; and  
“UK licence” means a licence within the meaning of Part I of the Oil Taxation Act 1975.

### **138B Disposal of oil licences: election for alternative tax treatment.**

- (1) Subsections (2) and (3) below apply where—
- (a) a person (“the transferor”) disposes of any interest in an oil licence to another (“the transferee”) during the transitional period;
  - (b) part of the value of the interest is attributable to allowable exploration expenditure incurred by the transferor; and
  - (c) an election is made in accordance with this section specifying an amount as the amount to be treated as so attributable.
- (2) Section 138 shall have effect in relation to the disposal as if—
- (a) the disposal were a disposal by which an asset representing the allowable exploration expenditure ceases to belong to the transferor; and
  - (b) the disposal value of that asset were an amount equal to the amount specified in the election.
- (3) For the purposes of Part IV, the amount of any expenditure incurred—
- (a) by the transferee in acquiring the interest from the transferor, or
  - (b) by any person subsequently acquiring the interest (or an interest deriving from the interest),
- which is taken to be attributable to expenditure incurred, before the disposal to the transferee, on mineral exploration and access shall be the lesser of the amount specified in the election and the amount which, apart from this subsection, would be taken to be so attributable.
- (4) An election—
- (a) shall be made by notice to the Board given by the transferor; and

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- (b) subject to subsection (5) below, shall not have effect unless a copy of it is served on the transferee and the transferee consents to it.
- (5) If the Special Commissioners are satisfied—
  - (a) that the disposal was made under or in pursuance of an agreement entered into by the transferor and the transferee on the mutual understanding that a quantified (or quantifiable) part of the value of the interest disposed of was attributable to allowable exploration expenditure, and
  - (b) that the part quantified in accordance with that understanding and the amount specified in the election are the same,
 they may dispense with the need for the transferee to consent to the election.
- (6) Any question falling to be determined by the Special Commissioners under subsection (5) above shall be determined by them in like manner as if it were an appeal; but both the transferor and the transferee shall be entitled to appear and be heard by those Commissioners or to make representations to them in writing.
- (7) Subject to subsection (8) below, an election may specify any amount, including a nil amount, as the amount to be treated as mentioned in subsection (1)(c) above.
- (8) Where—
  - (a) a return has been made for a chargeable period of the transferor, and
  - (b) the return includes, at the time when it is made, an amount which, disregarding the provisions of this section, would be treated under section 138 as a trading receipt accruing in that period,
 the election must not specify an amount less than the amount included in the return unless the Board agrees the lesser amount in question.
- (9) An election made in accordance with this section—
  - (a) is irrevocable; and
  - (b) shall not be varied after it is made.
- (10) For the purposes of this section a disposal is a disposal made during the transitional period if it is one made—
  - (a) before 13th September 1995; or
  - (b) on or after that date in pursuance of any obligation to make the disposal which, immediately before that date, was an unconditional obligation.
- (11) For the purposes of subsection (10) above, the fact that a third party who is not connected with the transferor or the transferee may, by exercising any right or withholding any permission, prevent the fulfilment of an obligation does not prevent the obligation from being treated as unconditional.
- (12) In subsection (11) above the reference to a third party is a reference to any person, body, government or public authority, whether within or outside the United Kingdom; and section 839 of the principal Act (connected persons) applies for the purposes of that subsection.
- (13) All such assessments and adjustments of assessments shall be made as may be necessary to give effect to this section.”

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- (2) Section 151(1) of the <sup>M131</sup>Capital Allowances Act 1990 (procedure on apportionments under Parts I, III to VI and Part VIII) shall have effect, and be deemed always to have had effect, as if for “VI” there were substituted “VII”.
- (3) In section 118 of the Capital Allowances Act 1990 (mineral extraction licences in the case of assets formerly owned by non-traders), the existing provisions shall become subsection (1) of that section and the following subsection shall be inserted after that subsection—
  - “(2) Section 138A shall have effect for the purposes of subsection (1) above in relation to expenditure on mineral exploration and access as it has effect for the purposes of section 138 in relation to allowable scientific research expenditure of a capital nature.”
- (4) Subsection (3) above applies in relation to any sale taking place on or after 13th September 1995.
- (5) In any case to which enactments re-enacted in the <sup>M132</sup>Capital Allowances Act 1990 apply instead of that Act, this section shall have effect as if it required amendments equivalent to those made by subsections (1) and (2) above to have effect, and be deemed always to have had effect, in relation to those enactments.

#### Marginal Citations

- M127 1975 c. 22.
- M128 1934 c. 36.
- M129 1964 c. 28 (N.I.).
- M130 1934 c. 36.
- M131 1990 c. 1.
- M132 1990 c. 1.

## 181 Overseas petroleum.

- (1) In subsection (1) of section 196 of the <sup>M133</sup>Taxation of Chargeable Gains Act 1992 (interpretation of sections 194 and 195), for “licence” there shall be substituted “UK licence”.
  - (2) After subsection (1) of section 196 of that Act there shall be inserted the following subsection—
    - “(1A) For the purposes of section 194 a licence other than a UK licence relates to an undeveloped area at any time if, at that time—
      - (a) no development has actually taken place in any part of the licensed area; and
      - (b) no condition for the carrying out of development anywhere in that area has been satisfied—
        - (i) by the grant of any consent by the authorities of a country or territory exercising jurisdiction in relation to the area; or
        - (ii) by the approval or service on the licensee, by any such authorities, of any programme of development.”;
- and in subsection (2) of that section for “subsection (1) above” there shall be substituted “subsections (1) and (1A) above”.

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- (3) For subsection (5) of section 196 of that Act there shall be substituted the following subsections—

“(5) In sections 194 and 195 and this section—

“foreign oil concession” means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;

“interest” in relation to a licence, includes, where there is an agreement which—

- (a) relates to oil from the whole or any part of the licensed area, and
- (b) was made before the extraction of the oil to which it relates,

any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;

“licence” means any UK licence or foreign oil concession;

“licensed area” (subject to subsection (4) above)—

- (a) in relation to a UK licence, has the same meaning as in Part I of the <sup>M134</sup>Oil Taxation Act 1975; and
- (b) in relation to a foreign oil concession, means the area to which the concession applies;

“licensee”—

- (a) in relation to a UK licence, has the same meaning as in Part I of the Oil Taxation Act 1975; and
- (b) in relation to a foreign oil concession, means the person with the concession or any person having an interest in it;

“oil”—

- (a) except in relation to a UK licence, means any petroleum (within the meaning of the <sup>M135</sup>Petroleum (Production) Act 1934); and
- (b) in relation to such a licence, has the same meaning as in Part I of the Oil Taxation Act 1975;

“overseas petroleum” means any oil that exists in its natural condition at a place to which neither the <sup>M136</sup>Petroleum (Production) Act 1934 nor the <sup>M137</sup>Petroleum (Production) Act (Northern Ireland) 1964 applies; and

“UK licence” means a licence within the meaning of Part I of the <sup>M138</sup>Oil Taxation Act 1975.

(5A) References in sections 194 and 195 to a part disposal of a licence shall include references to the disposal of any interest in a licence.”

- (4) Subsections (1) to (3) above shall have effect in relation to any disposal on or after 13th September 1995 and subsection (3) shall also have effect, and be deemed always to have had effect, for the construction of section 195 of the <sup>M139</sup>Taxation of Chargeable Gains Act 1992 in its application to disposals before that date.
- (5) Where enactments re-enacted in the <sup>M140</sup>Taxation of Chargeable Gains Act 1992 apply, instead of that Act, in the case of any disposal before 13th September 1995, this section shall have effect as if it required amendments equivalent to those made by subsection (3) above to have effect, and be deemed always to have had effect, for the construction of any enactment corresponding to section 195 of that Act.

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**Marginal Citations**

- M133 1992 c. 12.
- M134 1975 c. 22.
- M135 1934 c. 36.
- M136 1934 c. 36.
- M137 1964 c. 28 (N.I.).
- M138 1975 c. 22.
- M139 1992 c. 12.
- M140 1992 c. 12.

**182 Controlled foreign companies.**

Schedule 36 to this Act (which contains amendments of Chapter IV of Part XVII of the Taxes Act 1988) shall have effect in relation to accounting periods of a controlled foreign company, within the meaning of that Chapter, beginning on or after 28th November 1995.

**PART V**

**INHERITANCE TAX**

**183 Rate bands.**

- (1) For the Table in Schedule 1 to the <sup>M141</sup>Inheritance Tax Act 1984 there shall be substituted—

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**“TABLE OF RATES OF TAX**

<i>Portion of value</i>		<i>Rate of tax</i>
Lower limit	Upper limit	Per cent.
£	£	
0	200,000	Nil
200,000		40”

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- (2) Subsection (1) above shall apply to any chargeable transfer made on or after 6th April 1996; and section 8 of that Act (indexation of rate bands) shall not have effect as respects any difference between the retail prices index for the month of September 1994 and that for the month of September 1995.

**Marginal Citations**

- M141 1984 c. 51.

**184 Business property relief.**

- (1) The Inheritance Tax Act 1984 shall be amended as follows.

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- (2) In section 105(1) (relevant business property for the purposes of business property relief)—
- (a) in paragraph (b) (unquoted shares and securities attracting 100 per cent. relief where they gave the transferor control of a company)—
    - (i) the words “ shares in or ” shall be omitted; and
    - (ii) for the words “shares or securities owned by the transferor” there shall be substituted “ securities owned by the transferor and any unquoted shares so owned ”;
  - (b) for paragraph (bb) (unquoted shares attracting 100 per cent. relief in other cases) there shall be substituted the following paragraph—
    - “(bb) any unquoted shares in a company;”
- and
- (c) paragraph (c) (unquoted shares attracting 50 per cent. relief) shall be omitted.
- (3) In section 107(4) (replacement of property with unquoted shares), for the words from the beginning to “such shares” there shall be substituted—
- “(4) Without prejudice to subsection (1) above, where any shares falling within section 105(1)(bb) above which are”.
- (4) In section 113A(3A)(b) (which contains a reference to shares and securities falling within paragraph (b) of section 105(1)), after “(b)” there shall be inserted “ or (bb) ”.
- (5) For the removal of any doubt, the following subsection shall be inserted in section 113A (provisions applying to business property relief where there is a transfer within seven years of death) after subsection (7)—
- “(7A) The provisions of this Chapter for the reduction of value transferred shall be disregarded in any determination for the purposes of this section of whether there is a potentially exempt or chargeable transfer in any case.”
- (6) This section—
- (a) so far as it inserts a new subsection (7A) in section 113A, has effect in relation to any transfer of value on or after 28th November 1995; and
  - (b) so far as it makes any other provision, has effect—
    - (i) in relation to any transfer of value on or after 6th April 1996, and
    - (ii) for the purposes of any charge to tax by reason of an event occurring on or after 6th April 1996, in relation to transfers of value before that date.

## 185 Agricultural property relief.

- (1) Chapter II of Part V of the <sup>M142</sup>Inheritance Tax Act 1984 (agricultural property) shall be amended as follows.
- (2) In section 116 (relief for transfers of agricultural property) after subsection (5) there shall be inserted—
- “(5A) Where, in consequence of the death on or after 1st September 1995 of the tenant or, as the case may be, the last surviving tenant of any property, the tenancy—

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- (a) becomes vested in a person, as a result of his being a person beneficially entitled under the deceased tenant's will or other testamentary writing or on his intestacy, and
- (b) is or becomes binding on the landlord and that person as landlord and tenant respectively,

subsection (2)(c) above shall have effect as if the tenancy so vested had been a tenancy beginning on the date of the death.

(5B) Where in consequence of the death on or after 1st September 1995 of the tenant or, as the case may be, the last surviving tenant of any property, a tenancy of the property or of any property comprising the whole or part of—

- (a) is obtained by a person under or by virtue of an enactment, or
- (b) is granted to a person in circumstances such that he is already entitled under or by virtue of an enactment to obtain such a tenancy, but one which takes effect on a later date, or
- (c) is granted to a person who is or has become the only or only remaining applicant, or the only or only remaining person eligible to apply, under a particular enactment for such a tenancy in the particular case,

subsection (2)(c) above shall have effect as if the tenancy so obtained or granted had been a tenancy beginning on the date of the death.

(5C) Subsection (5B) above does not apply in relation to property situate in Scotland.

(5D) If, in a case where the transferor dies on or after 1st September 1995,—

- (a) the tenant of any property has, before the death, given notice of intention to retire in favour of a new tenant, and
- (b) the tenant's retirement in favour of the new tenant takes place after the death but not more than thirty months after the giving of the notice,

subsection (2)(c) above shall have effect as if the tenancy granted or assigned to the new tenant had been a tenancy beginning immediately before the transfer of value which the transferor is treated by section 4(1) above as making immediately before his death.

(5E) In subsection (5D) above and this subsection—

“the new tenant” means—

- (a) the person or persons identified in a notice of intention to retire in favour of a new tenant as the person or persons who it is desired should become the tenant of the property to which that notice relates; or
- (b) the survivor or survivors of the persons so identified, whether alone or with any other person or persons;

“notice of intention to retire in favour of a new tenant” means, in the case of any property, a notice or other written intimation given to the landlord by the tenant, or (in the case of a joint tenancy or tenancy in common) all of the tenants, of the property indicating, in whatever terms, his or their wish that one or more persons identified in the notice or intimation should become the tenant of the property;

“the retiring tenant's tenancy” means the tenancy of the person or persons giving the notice of intention to retire in favour of a new tenant;

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“the tenant’s retirement in favour of the new tenant” means—

- (a) the assignment, or (in Scotland) assignation, of the retiring tenant’s tenancy to the new tenant in circumstances such that the tenancy is or becomes binding on the landlord and the new tenant as landlord and tenant respectively; or
- (b) the grant of a tenancy of the property which is the subject of the retiring tenant’s tenancy, or of any property comprising the whole or part of that property, to the new tenant and the acceptance of that tenancy by him;

and, except in Scotland, “grant” and “acceptance” in paragraph (b) above respectively include the deemed grant, and the deemed acceptance, of a tenancy under or by virtue of any enactment.”

- (3) In consequence of subsection (2) above, subsection (2A) of that section (which made, in relation to Scotland, provision which is superseded by the subsection (5A) inserted by subsection (2) above) shall cease to have effect.
- (4) For the removal of any doubt, the following subsection shall be inserted in section 124A (provisions applying to agricultural property relief where there is a transfer within seven years of death) after subsection (7)—

“(7A) The provisions of this Chapter for the reduction of value transferred shall be disregarded in any determination for the purposes of this section of whether there is a potentially exempt or chargeable transfer in any case.”

- (5) Subsection (2) above—
  - (a) so far as relating to subsections (5A) to (5C) of section 116 of the <sup>M143</sup>Inheritance Tax Act 1984, has effect in any case where the death of the tenant or, as the case may be, the sole surviving tenant, occurs on or after 1st September 1995; and
  - (b) so far as relating to subsections (5D) and (5E) of that section, has effect in any case where the death of the transferor occurs on or after 1st September 1995.
- (6) Subsection (3) above has effect in any case where the death of the tenant or, as the case may be, the sole surviving tenant, occurs on or after 1st September 1995.
- (7) Subsection (4) above has effect in relation to any transfer of value on or after 28th November 1995.

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**Marginal Citations**

**M142** 1984 c. 51.

**M143** 1984 c. 51.



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## PART VI

### STAMP DUTY AND STAMP DUTY RESERVE TAX

#### *Stamp duty*

#### [<sup>F27</sup>186 Transfers of securities to members of electronic transfer systems etc.

(1) Stamp duty shall not be chargeable on an instrument effecting a transfer of securities if the transferee is a member of an electronic transfer system and the instrument is in a form which will, in accordance with the rules of the system, ensure that the securities are changed from being held in certificated form to being held in uncertificated form so that title to them may become transferable by means of the system.

(2) In this section—

“certificated form” has the same meaning as in the relevant regulations;

“electronic transfer system” means a system and procedures which, in accordance with the relevant regulations, enable title to securities to be evidenced and transferred without a written instrument;

“member”, in relation to an electronic transfer system, means a person who is permitted by the operator of the system to transfer by means of the system title to securities held by him in uncertificated form;

“operator” means a person approved by the Treasury under the relevant regulations as operator of an electronic transfer system;

“the relevant regulations” means regulations under section 207 of the <sup>M144</sup>Companies Act 1989 (transfer without written instrument);

“securities” means stock or marketable securities;

“uncertificated form” has the same meaning as it has in the relevant regulations.

(3) This section applies in relation to instruments executed on or after 1st July 1996.

(4) This section shall be construed as one with the <sup>M145</sup>Stamp Act 1891.]

#### **Textual Amendments**

**F27** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

#### **Marginal Citations**

**M144** 1989 c. 40.

**M145** 1891 c. 39.

#### *Stamp duty reserve tax*

#### [<sup>F28</sup>187 Territorial scope of the tax.

(1) In section 86 of the <sup>M146</sup>Finance Act 1986 (introduction) after subsection (3) there shall be added—

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- “(4) Stamp duty reserve tax shall be chargeable in accordance with the provisions of this Part of this Act—
- (a) whether the agreement, transfer, issue or appropriation in question is made or effected in the United Kingdom or elsewhere, and
  - (b) whether or not any party is resident or situate in any part of the United Kingdom.”
- (2) The amendment made by subsection (1) above shall have effect—
- (a) in relation to an agreement, if—
    - (i) the agreement is conditional and the condition is satisfied on or after 1st July 1996; or
    - (ii) the agreement is not conditional and is made on or after that date; and
  - (b) in relation to a transfer, issue or appropriation made or effected on or after that date.]

#### Textual Amendments

**F28** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

#### Marginal Citations

**M146** 1986 c. 41.

### [<sup>F29</sup>188 Removal of the two month period.

- (1) In section 87 of the <sup>M147</sup>Finance Act 1986 (the principal charge) in subsection (2) (tax charged on the expiry of the period of two months beginning with the relevant day unless the first and second conditions are fulfilled before that period expires) the following shall be omitted—
  - (a) the words “ the expiry of the period of two months beginning with ”, and
  - (b) the words from “ unless ” to the end.
- (2) In section 88 of that Act (special cases) in subsection (1) (which provides for instruments on which stamp duty is not chargeable by virtue of certain enactments to be disregarded for the purposes of section 87(4) and (5)) before paragraph (a) there shall be inserted—
  - “(aa) section 65(1) of the <sup>M148</sup>Finance Act 1963 (renounceable letters of allotment etc),
  - (ab) section 14(1) of the <sup>M149</sup>Finance Act (Northern Ireland) 1963 (renounceable letters of allotment etc.)”.
- (3) Subsections (2) and (3) of that section (which are superseded by subsection (2) above) shall cease to have effect.
- (4) In section 92(1) of that Act (repayment or cancellation of tax where the conditions in section 87(4) and (5) are shown to have been fulfilled after the expiry of the period of two months beginning with the relevant day but before the expiry of six years so beginning)—
  - (a) for “after the expiry of the period of two months (beginning with the relevant day, as defined in section 87(3))” there shall be substituted “ on or after the relevant day (as defined in section 87(3)) ”; and

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- (b) for “(so beginning)” there shall be substituted “(beginning with that day)”.
- (5) The amendments made by this section shall have effect in relation to an agreement to transfer securities if—
- (a) the agreement is conditional and the condition is satisfied on or after 1st July 1996; or
  - (b) the agreement is not conditional and is made on or after that date.]

#### Textual Amendments

**F29** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII** and s. 188 repealed (with effect as mentioned in Sch. 20 Pt. V(2), Notes 1, 2 of the amending Act) by 1999 c. 16, s. 138, **Sch. 20 Pt. V(2)**

#### Marginal Citations

**M147** 1986 c. 41.  
**M148** 1963 c. 25.  
**M149** 1963 c. 22 (N.I.).

### [<sup>F30</sup>189 Transfers to members of electronic transfer systems etc.

- (1) In section 88 of the Finance Act 1986 (special cases) after subsection (1) there shall be inserted—

“(1A) An instrument on which stamp duty is not chargeable by virtue of section 186 of the Finance Act 1996 (transfers of securities to members of electronic transfer systems etc) shall be disregarded in construing section 87(4) and (5) above unless—

- (a) the transfer is made by a stock exchange nominee; and
- (b) the maximum stamp duty chargeable on the instrument, apart from section 186 of the Finance Act 1996, would be 50p;

and in this subsection “stock exchange nominee” means a person designated for the purposes of section 127 of the <sup>M150</sup>Finance Act 1976 as a nominee of The Stock Exchange by an order made by the Secretary of State under subsection (5) of that section.”

- (2) This section has effect in relation to an agreement to transfer securities if an instrument is executed on or after 1st July 1996 in pursuance of the agreement.]

#### Textual Amendments

**F30** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

#### Marginal Citations

**M150** 1976 c. 40.

### [<sup>F31</sup>190 Transfers between associated bodies.

- (1) In section 88 of the <sup>M151</sup>Finance Act 1986 (special cases) after subsection (1A) there shall be inserted—

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“(1B) An instrument on which stamp duty is not chargeable by virtue of section 42 of the <sup>M152</sup>Finance Act 1930 or section 11 of the <sup>M153</sup>Finance Act (Northern Ireland) 1954 (transfer between associated bodies corporate) shall be disregarded in construing section 87(4) and (5) above in any case where—

- (a) the property mentioned in section 42(2)(a) of the Finance Act 1930 or, as the case may be, section 11(2)(a) of the Finance Act (Northern Ireland) 1954 consists of chargeable securities of any particular kind acquired in the period of two years ending with the day on which the instrument was executed; and
- (b) the body corporate from which the conveyance or transfer there mentioned is effected acquired the chargeable securities—
  - (i) in a transaction which was given effect by an instrument of transfer on which stamp duty was not chargeable by virtue of section 81 above;
  - (ii) in pursuance of an agreement to transfer securities as regards which section 87 above did not apply by virtue of section 89 below; or
  - (iii) in circumstances with regard to which the charge to stamp duty or stamp duty reserve tax was treated as not arising by virtue of regulations under section 116 or 117 of the <sup>M154</sup>Finance Act 1991.”

(2) At the end of that section there shall be added—

“(4) For the purposes of subsection (1B) above, if the securities mentioned in paragraph (a) of that subsection cannot (apart from this subsection) be identified, securities shall be taken as follows, that is to say, securities of the same kind acquired later in the period of two years there mentioned (and not taken under this subsection for the purposes of any earlier instrument) shall be taken before securities acquired earlier in that period.

(5) If, in a case where subsection (4) above applies, some, but not all, of the securities taken in accordance with that subsection were acquired as mentioned in paragraph (b) of subsection (1B) above by the body corporate mentioned in that paragraph, the stamp duty reserve tax chargeable under section 87 above by virtue of subsection (1B) above shall not exceed the tax that would have been so chargeable had the agreement to transfer the securities related only to such of the securities so taken as were so acquired.

(6) Where a person enters into an agreement for securities to be transferred to him or his nominee, the securities shall be treated for the purposes of subsections (1B)(a) and (4) above as acquired by that person at the time when he enters into the agreement, unless the agreement is conditional, in which case they shall be taken to be acquired by him when the condition is satisfied.”

(3) This section has effect where the instrument on which stamp duty is not chargeable by virtue of section 42 of the <sup>M155</sup>Finance Act 1930 or section 11 of the <sup>M156</sup>Finance Act (Northern Ireland) 1954 is executed on or after 4th January 1996 in pursuance of an agreement to transfer securities made on or after that date.]

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#### Textual Amendments

**F31** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

#### Marginal Citations

**M151** 1986 c. 41.  
**M152** 1930 c. 28.  
**M153** 1954 c. 23 (N.I.).  
**M154** 1991 c. 31.  
**M155** 1930 c. 28.  
**M156** 1954 c. 23 (N.I.).

### [<sup>F32</sup>191 Stock lending and collateral security arrangements.

(1) After section 89A of the <sup>M157</sup>Finance Act 1986 (exceptions from section 87 for public issues) there shall be inserted—

**“ Section 87: exceptions for stock lending and collateral security arrangements.**

- (1) Where a person (P) has contracted to sell chargeable securities of a particular kind in the ordinary course of his business as a market maker in chargeable securities of that kind and, to enable him to fulfil the contract, he enters into an arrangement under which—
- (a) another person (Q) is to transfer chargeable securities to P or his nominee, and
  - (b) in return, chargeable securities of the same kind and amount are to be transferred (whether or not by P or his nominee) to Q or his nominee,
- section 87 above shall not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (2) Where the arrangement mentioned in subsection (1) above is also one under which—
- (a) an amount of chargeable securities of some other kind is to be transferred by P or his nominee to Q or his nominee by way of security for the performance of the obligation described in paragraph (b) of that subsection, and
  - (b) on performance of that obligation, the securities mentioned in paragraph (a) above, or chargeable securities of the same kind and amount as those securities, are to be transferred to P or his nominee,
- section 87 above shall also not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (3) Where, to enable Q to make the transfer to P or his nominee which is mentioned in paragraph (a) of subsection (1) above, Q enters into an arrangement under which—

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- (a) another person (R) is to transfer chargeable securities to Q or his nominee, and
  - (b) in return, chargeable securities of the same kind and amount are to be transferred (whether or not by Q or his nominee) to R or his nominee,
- section 87 above shall not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (4) Where the arrangement mentioned in subsection (3) above is also one under which—
- (a) an amount of chargeable securities of some other kind is to be transferred by Q or his nominee to R or his nominee by way of security for the performance of the obligation described in paragraph (b) of that subsection, and
  - (b) on performance of that obligation, the securities mentioned in paragraph (a) above, or chargeable securities of the same kind and amount as those securities, are to be transferred to Q or his nominee,
- section 87 above shall also not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (5) For the purposes of this section a person is a market maker in chargeable securities of a particular kind if he—
- (a) holds himself out at all normal times in compliance with the rules of The Stock Exchange as willing to buy and sell chargeable securities of that kind at a price specified by him, and
  - (b) is recognised as doing so by The Stock Exchange.
- (6) The Treasury may by regulations provide that for subsection (5) above (as it has effect for the time being) there shall be substituted a subsection containing a different definition of a market maker for the purposes of this section.
- (7) Regulations under subsection (6) above shall apply in relation to any agreement to transfer chargeable securities in pursuance of an arrangement entered into on or after such day after 1st July 1996 as is specified in the regulations.
- (8) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) This section applies in relation to agreements to transfer chargeable securities in pursuance of an arrangement entered into on or after 1st July 1996.]

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**Textual Amendments**

**F32** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII** and s. 191 repealed (with effect as mentioned in Sch. 18 Pt. VII, Note 8 of the amending Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. VII**

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### Marginal Citations

M157 1986 c. 41.

## [<sup>F33</sup>192 Repayment or cancellation of tax.

- (1) In consequence of section 188(1) above, subsections (4), (5) and (8) of section 87 of the <sup>M158</sup>Finance Act 1986 (exemption from stamp duty reserve tax where an instrument is executed etc) shall cease to have effect.
- (2) In section 88 of that Act (which provides for instruments on which stamp duty is not chargeable by virtue of certain enactments to be disregarded for the purposes of section 87(4) and (5)) in subsections (1), (1A) and (1B) for “section 87(4) and (5) above” there shall be substituted “ section 92(1A) and (1B) below ”.
- (3) In section 92 of that Act (repayment or cancellation of tax) in subsection (1) (which refers to the conditions in section 87(4) and (5))—
  - (a) for “section 87(4) and (5)” there shall be substituted “ subsections (1A) and (1B) below ”; and
  - (b) for “the following provisions of this section shall apply” there shall be substituted “ subsections (2) to (4A) of this section shall apply ”.
- (4) After that subsection, there shall be inserted—
  - “(1A) The first condition is that an instrument is (or instruments are) executed in pursuance of the agreement and the instrument transfers (or the instruments between them transfer) to B or, as the case may be, to his nominee all the chargeable securities to which the agreement relates.
  - (1B) The second condition is that the instrument (or each instrument) transferring the chargeable securities to which the agreement relates is duly stamped in accordance with the enactments relating to stamp duty if it is an instrument which, under those enactments, is chargeable with stamp duty or otherwise required to be stamped.”
- (5) At the end of that section there shall be added—
  - “(6) In this section “the enactments relating to stamp duty” means the <sup>M159</sup>Stamp Act 1891 and any enactment which amends or is required to be construed together with that Act.”
- (6) The amendments made by this section shall have effect in relation to an agreement to transfer securities if—
  - (a) the agreement is conditional and the condition is satisfied on or after 1st July 1996; or
  - (b) the agreement is not conditional and is made on or after that date.]

### Textual Amendments

**F33** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

### Marginal Citations

M158 1986 c. 41.

*Status:* Point in time view as at 29/04/1996. This version of this Act contains provisions that are not valid for this point in time.

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**M159** 1891 c. 39.

[<sup>F34F34</sup>**193** **Depository receipts.**

- (1) Section 93 of the Finance Act 1986 (depository receipts) shall be amended in accordance with the following provisions of this section.
- (2) In subsection (1) (charge to stamp duty reserve tax where certain things are done in pursuance of an arrangement) in paragraph (b) (transfer or issue to, or appropriation by, a person falling within subsection (3))—
  - (a) after “transferred or issued to” there shall be inserted “ the person mentioned in paragraph (a) above or ”; and
  - (b) for “such a person” there shall be substituted “ the person mentioned in paragraph (a) above or a person falling within subsection (3) below ”.
- (3) In subsection (6) (payment by instalments) in paragraph (d) (instrument received by person falling within subsection (3)) for “subsection (3)” there shall be substituted “ subsection (2) or (3) ”.
- (4) This section has effect—
  - (a) so far as relating to the charge to tax under section 93(1) of the <sup>M160</sup>Finance Act 1986, where securities are transferred, issued or appropriated on or after 1st July 1996 (whenever the arrangement was made);
  - (b) so far as relating to the charge to tax under section 93(10) of that Act, in relation to instalments payable on or after 1st July 1996.]

**Textual Amendments**

**F34** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

**Marginal Citations**

**M160** 1986 c. 41.

[<sup>F35</sup>**194** **Rates of charge expressed as percentages.**

- (1) In section 87 of the Finance Act 1986, in subsection (6) (which specifies the rate at which stamp duty reserve tax under that section is charged) for “50p for every £100 or part of £100” there shall be substituted “ 0.5 per cent. ”
- (2) In section 93 of that Act (depository receipts)—
  - (a) in subsection (4) (rate of charge) for “£1.50 for every £100 or part of £100” there shall be substituted “ 1.5 per cent. ”;
  - (b) in subsection (5) (which applies subsection (4) with modifications in certain cases where the securities are transferred by a chargeable instrument) for the words from “as if “£1.50” read” onwards there shall be substituted “ as if “1.5 per cent.” read “1 per cent.” ”; and
  - (c) in subsection (10) (payment in instalments etc) in paragraph (b), for “£1.50 for every £100 or part of £100” there shall be substituted “ 1.5 per cent. of the amount ”.



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- (3) Section 94(8) of that Act (which defines “the day of The Stock Exchange reforms” for the purposes of section 93(5) and which becomes unnecessary in consequence of the amendment made by subsection (2)(b) above) shall be omitted.
- (4) In section 96 of that Act (clearance services)—
- (a) in subsection (2) (rate of charge) for “£1.50 for every £100 or part of £100” there shall be substituted “ 1.5 per cent. ”;
  - (b) in subsection (3) (which applies subsection (2) with modifications in certain cases where the securities are transferred by a chargeable instrument) for the words from “as if “£1.50” read” onwards there shall be substituted “ as if “1.5 per cent.” read “1 per cent.” ”; and
  - (c) in subsection (8) (payment in instalments etc) in paragraph (b), for “£1.50 for every £100 or part of £100” there shall be substituted “ 1.5 per cent. of the amount ”.
- (5) Section 96(12) of that Act (which defines “the day of The Stock Exchange reforms” for the purposes of subsection (3) and which becomes unnecessary in consequence of the amendment made by subsection (4)(b) above) shall be omitted.
- (6) In section 99 of that Act (interpretation) after subsection (12) there shall be added—
- “(13) Where the calculation of any tax in accordance with the provisions of this Part results in an amount which is not a multiple of one penny, the amount so calculated shall be rounded to the nearest penny, taking any  $\frac{1}{2}$ p as nearest to the next whole penny above.”
- (7) Subsections (1) to (5) above have effect in accordance with the following provisions of this subsection, that is to say—
- (a) in relation to the charge to tax under section 87 of the <sup>M161</sup>Finance Act 1986, subsection (1) above applies where—
    - (i) the agreement to transfer is conditional and the condition is satisfied on or after 1st July 1996; or
    - (ii) the agreement is not conditional and is made on or after 1st July 1996;
  - (b) in relation to the charge to tax under section 93(1) of that Act, paragraphs (a) and (b) of subsection (2) above apply where securities are transferred, issued or appropriated on or after 1st July 1996 (whenever the arrangement was made) and subsection (3) above has effect accordingly;
  - (c) in relation to the charge to tax under section 93(10) of that Act, paragraph (c) of subsection (2) above applies in relation to instalments payable on or after 1st July 1996;
  - (d) in relation to the charge to tax under section 96(1) of that Act, paragraphs (a) and (b) of subsection (4) above apply where securities are transferred or issued on or after 1st July 1996 (whenever the arrangement was made) and subsection (5) above has effect accordingly;
  - (e) in relation to the charge to tax under section 96(8) of that Act, paragraph (c) of subsection (4) above applies in relation to instalments payable on or after 1st July 1996.]

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#### Textual Amendments

**F35** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII** and s. 194(2)(b)(4)(b) repealed (with effect as mentioned in Sch. 18 Pt. VII, Note 8 of the amending Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. VII**

#### Marginal Citations

**M161** 1986 c. 41.

### [<sup>F36</sup>195 Regulations concerning administration: sub-delegation to the Board.

In section 98 of the <sup>M162</sup>Finance Act 1986 (Treasury regulations with respect to administration etc) after subsection (1) there shall be inserted—

“(1A) The power conferred on the Treasury by subsection (1) above includes power to make provision conferring or imposing on the Board functions which involve the exercise of a discretion.”]

#### Textual Amendments

**F36** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

#### Marginal Citations

**M162** 1986 c. 41.

### *Clearance services*

### [<sup>F37</sup>196 Election by operator for alternative system of charge.

- (1) In section 70 of the Finance Act 1986 (clearance services) in subsection (1) (which, subject to subsection (9), makes provision with respect to stamp duty on transfers into clearance services) after “Subject to subsection (9)” there shall be inserted “ and section 97A ”.
- (2) In section 96 of that Act (clearance services) in subsection (1) (which, subject to subsection (5) and section 97, provides for stamp duty reserve tax to be chargeable on transfers into clearance services) for “section 97” there shall be substituted “ sections 97 and 97A ”.
- (3) After section 97 of that Act (exceptions) there shall be inserted—

#### “ Clearance services: election for alternative system of charge.

- (1) A person whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities or relevant securities (an “operator”) may, with the approval of the Board, elect that stamp duty and stamp duty reserve tax shall be chargeable in accordance with this section in connection with those clearance services.
- (2) An election under subsection (1) above—

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- (a) shall come into force on such date as may be notified to the operator by the Board in giving their approval; and
  - (b) shall continue in force unless and until it is terminated in accordance with the following provisions of this section.
- (3) If and so long as an election under subsection (1) above is in force, stamp duty or stamp duty reserve tax (as the case may require) shall, in connection with the clearance services to which the election relates, be chargeable in relation to—
  - (a) a transfer or issue falling within section 70(1) or 96(1) above,
  - (b) an agreement falling within section 90(4) above by virtue of section 96(1) above, or
  - (c) an agreement falling within section 90(5) above,as it would be chargeable apart from sections 70, 90(4) and (5) and 96 above.
- (4) Where stamp duty or stamp duty reserve tax is chargeable by virtue of subsection (3) above in relation to a transfer, issue or agreement, sections 70, 90(4) and (5) and 96 above shall not have effect in relation to that transfer, issue or agreement.
- (5) Nothing in subsection (3) or (4) above affects the application of section 70 or 96 above in relation to a transfer falling within section 70(1) or 96(1) above by the operator or his nominee to, or to a nominee of, another operator in relation to whom no election under subsection (1) above is for the time being in force.
- (6) The Board may require the operator, as a condition of the approval of his election under subsection (1) above, to make and maintain such arrangements as they may consider satisfactory—
  - (a) for the collection of stamp duty reserve tax chargeable in accordance with this section, and
  - (b) for complying, or securing compliance, with the provisions of this Part and of regulations under section 98 below, so far as relating to such tax.
- (7) Where the operator is not resident in the United Kingdom and has no branch or agency in the United Kingdom, the Board may require him, as a condition of the approval of his election under subsection (1) above, to appoint and, so long as the election remains in force, maintain a tax representative.
- (8) A person shall not be an operator's tax representative under this section unless that person—
  - (a) has a business establishment in the United Kingdom, and
  - (b) is approved by the Board.
- (9) A person who is at any time an operator's tax representative under this section—
  - (a) shall be entitled to act on the operator's behalf for the purposes of stamp duty and stamp duty reserve tax in connection with the clearance services to which the operator's election under subsection (1) above relates,
  - (b) shall secure (where appropriate by acting on the operator's behalf) the operator's compliance with and discharge of the obligations and liabilities to which the operator is subject, in connection

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with the clearance services to which the operator's election under subsection (1) above relates, by virtue of legislation relating to stamp duty or stamp duty reserve tax (including obligations and liabilities arising before he became the operator's tax representative), and

- (c) shall be personally liable in respect of any failure to secure the operator's compliance with or discharge of any such obligation or liability, and in respect of anything done for purposes connected with acting on the operator's behalf,

as if the obligations and liabilities imposed on the operator were imposed jointly and severally on the tax representative and the operator.

- (10) An election under subsection (1) above may be terminated—
- (a) by not less than thirty days' notice given by the operator to the Board or by the Board to the operator; or
- (b) if there is or has been a breach of a condition of the approval of the election imposed by virtue of subsection (6) or (7) above, by a notice—
- (i) given by the Board to the operator,
- (ii) taking effect on the giving of the notice or at such later time as may be specified in the notice, and
- (iii) stating that it is given by reason of the breach of condition.
- (11) Where an election under subsection (1) above is terminated, section 96 above shall have effect as if chargeable securities of the same amounts and kinds as are, immediately before the termination, held by the operator or his nominee in connection with the provision of the clearance services, had, immediately after the termination, been transferred to the operator or, as the case may be, to the nominee by a transfer falling within subsection (1) of that section.
- (12) In this section "relevant securities" has the same meaning as in section 70 above."
- (4) Section 97(2) of that Act (no charge to tax under section 96 on transfers to a stock exchange nominee or to, or to a nominee of, a recognised investment exchange or recognised clearing house) shall not have effect in relation to any transfer effected on or after 1st July 1996.
- (5) In section 99(10) of that Act (interpretation of "chargeable securities" in sections 93, 94 and 96) for "and 96" there shall be substituted " , 96 and 97A ".
- (6) Subsections (1), (2), (3) and (5) above shall come into force on 1st July 1996.]

#### Textual Amendments

**F37** Ss. 186-196 repealed (with effect as mentioned in Sch. 41 Pt. VII, Note 4 of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VII**

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## PART VII

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous: indirect taxation*

#### **197 Setting of rates of interest.**

- (1) The rate of interest applicable for the purposes of an enactment to which this section applies shall be the rate which for the purposes of that enactment is provided for by regulations made by the Treasury under this section.
- (2) This section applies to—
  - (a) paragraphs 7 and 9 of Schedule 6 to the <sup>M163</sup>Finance Act 1994 (interest payable to or by the Commissioners of Customs and Excise in connection with air passenger duty);
  - (b) paragraphs 21 and 22 of Schedule 7 to that Act (interest on amounts of insurance premium tax and on amounts payable by the Commissioners in respect of that tax);
  - (c) sections 74 and 78 of the <sup>M164</sup>Value Added Tax Act 1994 (interest on VAT recovered or recoverable by assessment and interest payable in cases of official error); and
  - (d) paragraphs 26 and 29 of Schedule 5 to this Act (interest payable to or by the Commissioners in connection with landfill tax).
- (3) Regulations under this section may—
  - (a) make different provision for different enactments or for different purposes of the same enactment,
  - (b) either themselves specify a rate of interest for the purposes of an enactment or make provision for any such rate to be determined, and to change from time to time, by reference to such rate or the average of such rates as may be referred to in the regulations,
  - (c) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
  - (d) provide for rates arrived at by reference to averages or formulae to be rounded up or down,
  - (e) provide for circumstances in which changes of rates of interest are or are not to take place, and
  - (f) provide that changes of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Where—
  - (a) regulations under this section provide, without specifying the rate determined in accordance with the regulations, for a new method of determining the rate applicable for the purposes of any enactment, or

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- (b) the rate which, in accordance with regulations under this section, is the rate applicable for the purposes of any enactment changes otherwise than by virtue of the making of regulations specifying a new rate,  
the Commissioners of Customs and Excise shall make an order specifying the new rate and the day from which, in accordance with the regulations, it has effect.
- (6) The words “ the rate applicable under section 197 of the Finance Act 1996 ” shall be substituted—
- (a) for the words “the specified rate” in each of paragraphs 7(1) and (3) and 9(1) of Schedule 6 to the <sup>M165</sup>Finance Act 1994 (air passenger duty);
  - (b) for the words “the prescribed rate” in each of sub-paragraphs (1) and (3) of paragraph 21 of Schedule 7 to that Act (insurance premium tax);
  - (c) for the words from “such rate” onwards in sub-paragraph (2) of paragraph 22 of that Schedule; and
  - (d) in the <sup>M166</sup>Value Added Tax Act 1994—
    - (i) for the words “the prescribed rate” in each of subsections (1), (2) and (4) of section 74, and
    - (ii) for the words from “such rates” onwards in subsection (3) of section 78.
- (7) Subsections (1) and (6) above shall have effect for periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint and shall have effect in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day; and different days may be appointed under this subsection for different purposes.

#### Marginal Citations

**M163** 1994 c. 9.

**M164** 1994 c. 23.

**M165** 1994 c. 9.

**M166** 1994 c. 23.

#### *Miscellaneous: direct taxation*

#### **198 Banks.**

Schedule 37 to this Act (which re-defines “bank” for certain purposes, and makes related amendments) shall have effect.

#### **199 Quotation or listing of securities.**

Schedule 38 to this Act (which contains amendments of enactments referring to the quotation or listing of securities) shall have effect.

#### **200 Domicile for tax purposes of overseas electors.**

(1) In determining—

- (a) for the purposes of inheritance tax, income tax or capital gains tax where a person is domiciled at any time on or after 6th April 1996, or

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- (b) for the purposes of section 267(1)(a) of the <sup>M167</sup>Inheritance Tax Act 1984 (deemed UK domicile for three years after ceasing to be so domiciled) where a person was domiciled at any time on or after 6th April 1993,  
there shall be disregarded any relevant action taken by that person (whether before, on or after that date) in connection with electoral rights.
- (2) Relevant action is taken by a person in connection with electoral rights where—
- (a) he does anything with a view to, or in connection with, being registered as an overseas elector; or
- (b) when registered as an overseas elector, he votes in any election at which he is entitled to vote by virtue of being so registered.
- (3) For the purposes of this section, a person is registered as an overseas elector if he is—
- (a) registered in any register mentioned in section 12(1) of the Representation of the <sup>M168</sup>People Act 1983 (right to be registered of persons entitled to vote at parliamentary elections) on account of any entitlement to vote conferred on him by section 1 of the Representation of the <sup>M169</sup>People Act 1985 (extension of parliamentary franchise to certain non-resident British citizens); or
- (b) registered under section 3 of that Act of 1985 (certain non-resident peers entitled to vote at European Parliamentary elections).
- (4) Nothing in subsection (1) above prevents regard being had, in determining the domicile of a person at any time, to any relevant action taken by him in connection with electoral rights if—
- (a) his domicile at that time falls to be determined for the purpose of ascertaining his or any other person's liability to any of the taxes mentioned in subsection (1)(a) above; and
- (b) the person whose liability is being ascertained wishes regard to be had to that action;
- and a person's domicile determined in accordance with any such wishes shall be taken to have been so determined for the purpose only of ascertaining the liability in question.

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**Marginal Citations**

**M167** 1984 c. 51.

**M168** 1983 c. 2.

**M169** 1985 c. 50.

## 201 Enactment of Inland Revenue concessions.

Schedule 39 to this Act has effect for the purpose of enacting certain extra-statutory concessions relating to income tax, corporation tax, capital gains tax, and stamp duty.

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*Miscellaneous: other matters*

**202 Gilt stripping.**

(1) In section 47 of the <sup>M170</sup>Finance Act 1942 (Treasury regulations with respect to the transfer and registration of Government stock), after paragraph (bb) of subsection (1) there shall be inserted the following paragraphs—

- “(bc) for the exchange of any such stock and bonds (whenever issued) for strips thereof;
- (bd) for exchanges by which such strips (whether deriving from the same security or from different securities) are consolidated into a single security of a description so specified;”.

(2) After subsection (1A) of that section (transfer of deceased persons’ stocks and bonds) there shall be inserted the following subsections—

“(1B) In this section “strip”, in relation to any stock or bond, means a security issued under the <sup>M171</sup>National Loans Act 1968 which—

- (a) is issued for the purpose of representing the right to, or of securing—
  - (i) a payment corresponding to a payment of interest or principal remaining to be made under the stock or bond, or
  - (ii) two or more payments each corresponding to a different payment remaining to be so made;
- (b) is issued in conjunction with the issue of one or more other securities which, together with that security, represent the right to, or secure, payments corresponding to every payment remaining to be made under the stock or bond; and
- (c) is not itself a security that represents the right to, or secures, payments corresponding to a part of every payment so remaining.

(1C) For the purposes of subsection (1B) of this section, where the balance has been struck for a dividend on any stock or bond, any payment to be made in respect of that dividend shall, at times falling after that balance has been struck, be treated as not being a payment remaining to be made under the stock or bond.

(1D) Without prejudice to the generality of the powers conferred by the preceding provisions of this section (but subject to subsection (1E) of this section), regulations made by virtue of paragraph (bc) or (bd) of subsection (1) of this section may—

- (a) provide, for the purpose of authorising the making of exchanges, for any stock or bonds to be treated as issued on such terms as may be specified in the regulations;
- (b) contain such provision as the Treasury think fit about the circumstances in which and the conditions subject to which exchanges may be effected; and
- (c) contain any such provision as could be contained in rules made under section 14(3) of the National Loans Act 1968 (Treasury rules as to exchange of securities).

(1E) Regulations made by virtue of subsection (1)(bc) or (bd) of this section shall not make provision for the exchange of any stock or bonds, or of any strips, in any cases other than those where the exchange is at the request of the holder or in accordance with an order made by a court.



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- (1F) Regulations under this section may make different provision for different cases and contain such exceptions and exclusions as the Treasury think fit; and the powers of the Treasury to make regulations under this section are without prejudice to any of their powers under the <sup>M172</sup>National Loans Act 1968.”
- (3) After section 2 of the <sup>M173</sup>National Debt (Stockholders Relief) Act 1892 (date for striking balance for a dividend on stock) there shall be inserted the following section—

**“2A Payment of dividend on stock stripped after balance struck.**

- (1) Where—
- (a) any stock is exchanged for strips of that stock, and
  - (b) that exchange takes place after the balance has been struck for a dividend on that stock but before the day on which that dividend is payable,
- any person who would have been entitled to that dividend but for the exchange shall remain entitled to that dividend notwithstanding the exchange.
- (2) The Treasury may by order made by statutory instrument provide that for the purposes of this section and section 47(1C) of the <sup>M174</sup>Finance Act 1942, the balance for any dividend on any stock is to be deemed to be struck at a time which, by such a period as is specified in the order, precedes the time when the balance is actually struck.
- (3) A period specified in an order under subsection (2) above shall not exceed 7 days; and an order made under that subsection may make different provision for different cases.
- (4) In this section “strip”, in relation to any stock, has the meaning given by section 47 of the Finance Act 1942.”
- (4) In section 16 of the National Loans Act 1968 (supplemental provisions as to national debt), after subsection (4) there shall be inserted the following subsection—
- “(4A) In subsections (3) and (4) above the references to stock or registered bonds issued under this Act include references to a strip (within the meaning of section 47 of the Finance Act 1942) of any stock or bond (whether the stock or bond is issued under this Act or otherwise).”
- (5) The Treasury may by regulations make provision for securing that enactments and subordinate legislation which—
- (a) apply in relation to government securities or to any description of such securities, or
  - (b) for any other purpose refer (in whatever terms) to such securities or to any description of them,
- have effect with such modifications as the Treasury may think appropriate in consequence of the making of any provision or arrangements for, or in connection with, the issue or transfer of strips of government securities or the consolidation of such strips into other securities.
- (6) Regulations under subsection (5) above may—
- (a) impose a charge to income tax, corporation tax, capital gains tax, inheritance tax, stamp duty or stamp duty reserve tax;

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- (b) include provision applying generally to, or to any description of, enactments or subordinate legislation;
  - (c) make different provision for different cases; and
  - (d) contain such incidental, supplemental, consequential and transitional provision as the Treasury think appropriate.
- (7) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (8) Schedule 40 to this Act (which makes provision in relation to strips for taxation purposes) shall have effect.
- (9) The enactments that may be modified by regulations under this section shall include section 95 above and the enactments contained in Schedule 40 to this Act.
- (10) In this section—
- “government securities” means any securities included in Part I of Schedule 11 to the <sup>M175</sup>Finance Act 1942;
  - “modifications” includes amendments, additions and omissions; and
  - “subordinate legislation” has the same meaning as in the <sup>M176</sup>Interpretation Act 1978;
- and expressions used in this section and in section 47 of the <sup>M177</sup>Finance Act 1942 have the same meanings in this section as in that section.

#### Marginal Citations

**M170** 1942 c. 21.  
**M171** 1968 c. 13.  
**M172** 1968 c. 13.  
**M173** 1892 c. 39.  
**M174** 1942 c. 21.  
**M175** 1942 c. 21.  
**M176** 1978 c. 30.  
**M177** 1942 c. 21.

### 203 Modification of the Agriculture Act 1993.

- (1) Part I of Schedule 2 to the <sup>M178</sup>Agriculture Act 1993 (taxation provisions applying to the reorganisation of the milk marketing boards) shall have effect, and be deemed always to have had effect, in accordance with subsections (2) to (4) below where—
- (a) any approved scheme has made provision as to the functions of a milk marketing board in the period after the transfers taking effect on the vesting day under section 11 of that Act;
  - (b) regulations have been made by virtue of section 14(2) of that Act (provision following re-organisation) for giving effect to that provision; and
  - (c) a transaction is or has been entered into by that board in pursuance of any obligation under those regulations to carry out those functions so far as they relate to a subsidiary of the board.
- (2) For the purposes of that Part of that Schedule—

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- (a) anything done by way of entering into the transaction, or for the purpose of carrying it out, shall be deemed to have been done under and in accordance with the scheme; and
  - (b) the terms and other provisions having effect in relation to that transaction by virtue of anything contained in, or anything done in exercise of powers conferred by, any regulations under section 14(2) of the <sup>M179</sup>Agriculture Act 1993 shall be deemed to be terms for which the scheme provided or, as the case may be, to be provisions of the scheme.
- (3) Sub-paragraph (1) of paragraph 16 of Schedule 2 to the Agriculture Act 1993 (distributions) shall have effect, and be deemed always to have had effect, in a case where the terms and provisions mentioned in subsection (2)(b) above involved or involve—
  - (a) the issue or transfer of any shares in, or securities of, any body,
  - (b) the conferring of any right to a distribution out of the assets of any body,
  - (c) the conferring of any right to, or to acquire, shares in any body, or
  - (d) the transfer to any person of any property or rights of a milk marketing board, or of the subsidiary of such a board,as if the references to the vesting day in paragraphs (a), (c), (d) and (e) of that sub-paragraph were references to the day on which the winding up of the board is completed.
- (4) Sub-paragraph (4) of paragraph 31 of Schedule 2 to the Agriculture Act 1993 (condition to be satisfied if body to be qualifying body by virtue of sub-paragraph (1)(c)) shall have effect, and be deemed always to have had effect, as if—
  - (a) the reference, in relation to a company, to 90 per cent. of its ordinary share capital were a reference to 70 per cent. of its ordinary share capital; and
  - (b) the references to shares having been issued to any person included references to their having been allotted to that person.
- (5) Paragraph 1 of Schedule 2 to the Agriculture Act 1993 (tax continuity with successor bodies) shall have effect, and be deemed to have had effect, in relation to any relevant transfer after 31st December 1995 to a society registered under the <sup>M180</sup>Industrial and Provident Societies Act 1965 of—
  - (a) a trade, or part of a trade, of a milk marketing board, or
  - (b) any property, rights or liabilities of such a board,as it has effect in relation to any transfer under section 11 of that Act to a qualifying body.
- (6) Paragraphs 16, 20, 25, 26, 28 and 29 of Schedule 2 to the Agriculture Act 1993 shall have effect, and be deemed to have had effect, in relation to any relevant transfer after 31st December 1995 of assets of a milk marketing board to a society registered under the Industrial and Provident Societies Act 1965 as if—
  - (a) the terms and other provisions of the transaction for effecting the transfer were contained in an approved scheme;
  - (b) the society were a relevant successor of that board; and
  - (c) references in those paragraphs to the vesting day were references to the day on which the winding up of the board is completed.
- (7) For the purposes of subsections (5) and (6) above, a transfer of anything to a society registered under the <sup>M181</sup>Industrial and Provident Societies Act 1965 is a relevant transfer if—

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- (a) it is a transfer in pursuance of regulations made by virtue of section 14(2) of the <sup>M182</sup>Agriculture Act 1993;
  - (b) it is not a transfer of shares in a subsidiary of a milk marketing board; and
  - (c) the condition mentioned in sub-paragraph (5) of paragraph 31 of Schedule 2 to that Act would have been met in relation to that society if the provision made as to the persons to whom the membership of the society is open were contained in an approved scheme providing for the transfer.
- (8) Paragraph 20 of Schedule 2 to the Agriculture Act 1993 (treatment of acquisition of certain shares and securities) shall not apply, and shall be deemed never to have applied, in relation to the acquisition of any security after 31st December 1995 if the indebtedness acknowledged by that security does not fall, for the purposes of the <sup>M183</sup>Taxation of Chargeable Gains Act 1992, to be treated as a debt on a security (as defined in section 132 of that Act of 1992).
- (9) For the purposes of Chapter II of Part IV of this Act, so far as it has effect for any accounting period ending after 31st March 1996 in relation to any creditor relationship represented by a debenture issued on or after 31st December 1995, paragraph 25 of Schedule 2 to the Agriculture Act 1993 shall have effect as if sub-paragraph (2)(a) of that paragraph (deemed consideration for issue of debenture issued under approved scheme) were omitted.
- (10) For the purposes of the Taxation of Chargeable Gains Act 1992, where any debenture to which paragraph 25 of Schedule 2 to the Agriculture Act 1993 applies has been or is issued at any time after 31st December 1995, the indebtedness acknowledged by that debenture shall be deemed (where that would not otherwise be the case) to be, and always to have been, a debt on a security (as defined in section 132 of that Act of 1992).
- (11) Expressions used in this section and in Part I of the Agriculture Act 1993 have the same meanings in this section as in that Part.

**Marginal Citations**

[M178 1993 c. 37.](#)  
[M179 1993 c. 37.](#)  
[M180 1965 c.12.](#)  
[M181 1965 c. 12.](#)  
[M182 1993 c. 37.](#)  
[M183 1992 c.12.](#)

*Supplemental*

**204 Interpretation.**

In this Act “the Taxes Act 1988” means the <sup>M184</sup>Income and Corporation Taxes Act 1988.

**Marginal Citations**

[M184 1988 c. 1.](#)

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## **205 Repeals.**

- (1) The enactments mentioned in Schedule 41 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained in, or referred to, in the notes set out in that Schedule.

## **206 Short title.**

This Act may be cited as the Finance Act 1996.

**Status:**

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**Changes to legislation:**

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