



# Finance Act 2004

## 2004 CHAPTER 12

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [22nd July 2004]

Most Gracious Sovereign

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and to grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### EXCISE DUTIES

##### *Tobacco products duty*

#### **1 Rates of tobacco products duty**

- (1) For the Table of rates of duty in Schedule 1 to the Tobacco Products Duty Act 1979 (c. 7) substitute—

#### TABLE

1. Cigarettes	An amount equal to 22 per cent of the retail price plus £99.80 per thousand cigarettes.
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2. Cigars	£145.35 per kilogram.
3. Hand-rolling tobacco	£104.47 per kilogram.
4. Other smoking tobacco and chewing tobacco	£63.90 per kilogram.

- (2) This section shall be deemed to have come into force at 6 o'clock in the evening of 17th March 2004.

### *Alcoholic liquor duties*

## **2 Rate of duty on beer**

- (1) In section 36(1AA)(a) of the Alcoholic Liquor Duties Act 1979 (c. 4) (rate of duty on beer) for “£12.22” substitute “ £12.59 ”.
- (2) This section shall be deemed to have come into force at midnight on 21st March 2004.

## **3 Rates of duty on wine and made-wine**

- (1) For Part 1 of the Table of rates of duty in Schedule 1 to the Alcoholic Liquor Duties Act 1979 (rates of duty on wine and made-wine) substitute—

### **“PART 1**

#### WINE AND MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	£
Wine or made-wine of a strength not exceeding 4 per cent	50.38
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	69.27
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not sparkling	163.47
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	166.70
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	220.54
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	217.95”

- (2) This section shall be deemed to have come into force at midnight on 21st March 2004.

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#### 4 Duty stamps for spirits etc

- (1) At the beginning of Part 6 of the Alcoholic Liquor Duties Act 1979 (c. 4) (general control provisions) under the heading “*Sale of dutiable alcoholic liquors*” insert—

**“64A Retail containers of certain alcoholic liquors to be stamped**

Schedule 2A to this Act (duty stamps) has effect.”.

- (2) Before Schedule 3 to that Act insert the Schedule 2A set out in Schedule 1 to this Act.
- (3) In section 12(2) of the Finance Act 1994 (c. 9) (defaults engaging Commissioners' power to assess excise duty to the best of their judgement) after paragraph (c) insert—
- “**(ca)** any failure by any person to comply with a requirement to which he is made subject by or under Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps);”.
- (4) In section 14(1) of that Act (reviewable decisions) after paragraph (bc) insert—
- “**(bd)** any decision by the Commissioners as to whether or not any person is entitled to any repayment or credit by virtue of regulations under paragraph 4(2)(h) of Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps), or the amount of the repayment or credit to which any person is so entitled;
- (be)** any decision by the Commissioners made by virtue of regulations under paragraph 4(2)(i) of that Schedule that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;”.
- (5) The amendments made by this section have effect in relation to retail containers containing alcoholic liquor if the excise duty point for the alcoholic liquor falls on or after such day as the Treasury may by order made by statutory instrument appoint.
- (6) An order under subsection (5) may contain such supplemental and transitional provision and savings as the Treasury think fit in connection with the coming into effect of those amendments.
- (7) In subsection (5) “excise duty point” has the meaning given by section 1 of the Finance (No. 2) Act 1992 (c. 48).

#### *Hydrocarbon oil etc duties*

#### 5 Rates

- (1) In section 6 of the Hydrocarbon Oil Duties Act 1979 (c. 5) (hydrocarbon oil: rates of duty)—
- (a) in subsection (1A)(a) (ultra low sulphur petrol) for “£0.4710” substitute “£0.4902 ”,
- (b) in subsection (1A)(b) (other light oil) for “£0.5620” substitute “ £0.5790 ”,
- (c) in subsection (1A)(c) (ultra low sulphur diesel) for “£0.4710” substitute “ £0.4902 ”, and
- (d) in subsection (1A)(d) (other heavy oil) for “£0.5327” substitute “ £0.5487 ”.

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- (2) In section 6AA(3) of that Act (biodiesel: rate of duty) for “£0.2710” substitute “£0.2852”.
- (3) In section 11(1) of that Act (rebate on heavy oil)—
- (a) in paragraph (a) (fuel oil) for “£0.0382” substitute “£0.0624”,
  - (b) in paragraph (b) (gas oil: general) for “£0.0422” substitute “£0.0664”, and
  - (c) in paragraph (ba) (ultra low sulphur diesel) for “£0.0422” substitute “£0.0664”.
- (4) In section 13A(1) of that Act (rebate on unleaded petrol) for “£0.0601” substitute “£0.0620”.
- (5) In section 14(1) of that Act (rebate on light oil for use as furnace fuel) for “£0.0382” substitute “£0.0624”.
- (6) This section shall come into force on 1st September 2004.

**Commencement Information**

**I1** S. 5 in force at 1.9.2004, see s. 5(6)

**6 Road fuel gas**

- (1) At the end of section 5 of the Hydrocarbon Oil Duties Act 1979 (road fuel gas) (which becomes subsection (1)) add—
- “(2) In this Act “natural road fuel gas” is road fuel gas with a methane content of not less than 80%.”
- (2) For section 8(3) of that Act (rate of duty on road fuel gas) substitute—
- “(3) The rate of the duty under this section shall be—
- (a) in the case of natural road fuel gas, £0.1110 a kilogram, and
  - (b) in any other case, £0.1303 a kilogram.”
- (3) After section 21(2) of that Act (regulations) insert—
- “(2A) In the case of regulations made for the purposes mentioned in subsection (1) (c) above, different regulations may be made for different classes of road fuel gas.”
- (4) This section shall come into force on 1st September 2004.

**Commencement Information**

**I2** S. 6 in force at 1.9.2004, see s. 6(4)

**7 Sulphur-free fuel**

- (1) For section 1(3A) and (3B) of the Hydrocarbon Oil Duties Act 1979 (descriptions of hydrocarbon oil: ultra low sulphur petrol and unleaded petrol) substitute—
- “(3A) “Ultra low sulphur petrol” means unleaded petrol—



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- (a) the sulphur content of which does not exceed 0.005 per cent. by weight,
  - (b) the aromatics content of which does not exceed 35 per cent. by volume, and
  - (c) which is not sulphur-free petrol.
- (3B) “Sulphur-free petrol” means unleaded petrol the sulphur content of which does not exceed 0.001 per cent. by weight (or is nil).
- (3C) “Unleaded petrol” means petrol that contains not more than 0.013 grams of lead per litre of petrol; and petrol is “leaded petrol” if it is not unleaded petrol.”
- (2) For section 1(6) of that Act (ultra low sulphur diesel) substitute—
  - “(6) “Ultra low sulphur diesel” means gas oil—
    - (a) the sulphur content of which does not exceed 0.005 per cent. by weight,
    - (b) the density of which does not exceed 835 kilograms per cubic metre at a temperature of 15°C,
    - (c) of which not less than 95 per cent. by volume distils at a temperature not exceeding 345°C, and
    - (d) which is not sulphur-free diesel.
  - (7) “Sulphur-free diesel” means gas oil the sulphur content of which does not exceed 0.001 per cent. by weight (or is nil).”
- (3) In section 1(1) of that Act for “Subsections (2) to (6)” substitute “ Subsections (2) to (7) ”.
- (4) For section 2A(1) of that Act (power to amend definitions) substitute—
  - “(1) The Treasury may by order made by statutory instrument amend the definition for the purposes of this Act of—
    - (a) sulphur-free diesel;
    - (b) sulphur-free petrol;
    - (c) ultra low sulphur diesel;
    - (d) ultra low sulphur petrol;
    - (e) unleaded petrol and leaded petrol.”
- (5) In section 6(1A) of that Act (rates of duty)—
  - (a) after paragraph (a) insert—
    - “(aa) £0.4852 a litre in the case of sulphur-free petrol;”,
  - (b) in paragraph (b) after “other than ultra low sulphur petrol” insert “ and sulphur-free petrol ”,
  - (c) after paragraph (c) insert—
    - “(ca) £0.4852 a litre in the case of sulphur-free diesel;”, and
  - (d) in paragraph (d) after “other than ultra low sulphur diesel” insert “ and sulphur-free diesel ”.
- (6) In section 13AA(6) of that Act (restrictions on use of rebated kerosene) after “which is not ultra low sulphur diesel” insert “ or sulphur-free diesel ”.

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- (7) In section 13A(1) of that Act (rebate on unleaded petrol) after “, other than ultra low sulphur petrol” insert “ and sulphur-free petrol ”.
- (8) In section 27 of that Act (interpretation)—
- (a) after the definition of “road vehicle” insert—
    - ““sulphur-free diesel” has the meaning given by section 1(7) above;
    - “sulphur-free petrol” has the meaning given by section 1(3B) above;”,
    - and
  - (b) in the definition of “unleaded petrol” and “leaded petrol” for “section 1(3B) above.” substitute “ section 1(3C) above. ”
- (9) This section shall come into force on 1st September 2004.

**Commencement Information**

**I3** S. 7 in force at 1.9.2004, see s. 7(9)

**8 Definition of “fuel oil”**

Before section 2A(2) of the Hydrocarbon Oil Duties Act 1979 (c. 5) (power to amend definitions) insert—

“(1C) The Treasury may by order made by statutory instrument amend the definition for the purposes of section 11 of “fuel oil”.”

**9 Mixing of rebated oil**

- (1) For section 20AAA of the Hydrocarbon Oil Duties Act 1979 (mixing of rebated oil) substitute—

**“20AAA Mixing of rebated oil**

- (1) A duty of excise shall be charged on a mixture which is—
  - (a) produced by mixing fully rebated heavy oil with heavy oil which is not fully rebated, and
  - (b) supplied for use as fuel for any engine, motor or other machinery.
- (2) A duty of excise shall be charged on a mixture which is—
  - (a) produced by mixing partially rebated heavy oil with heavy oil which is not partially rebated, and
  - (b) supplied for use as fuel for any engine, motor or other machinery;
 but a mixture on which duty is charged under subsection (1) shall not be charged under this subsection.
- (3) A duty of excise shall be charged on a mixture which is produced by mixing—
  - (a) fully or partially rebated heavy oil, with
  - (b) biodiesel or a substance containing biodiesel.
- (4) The rate of duty on a mixture under subsection (1) or (2) shall be—

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- (a) in the case of a mixture supplied for use as fuel for a road vehicle, the rate of duty specified in section 6(1A)(d) (general rate for heavy oil), and
  - (b) in any other case, equivalent to the rate of rebate specified in section 11(1)(b) (general rate for gas oil).
- (5) The rate of duty on a mixture under subsection (3) shall be the rate of duty specified in section 6(1A)(d).
- (6) For the purposes of this section—
  - (a) oil is fully rebated if a rebate has been allowed in respect of it under section 11(1)(c) (general rebate for heavy oil),
  - (b) oil is partially rebated if a rebate has been allowed in respect of it under any other provision of section 11 or under section 13AA, and
  - (c) a reference to mixing is a reference to non-approved mixing (within the meaning given by section 20A(5)).
- (7) The person liable to pay duty charged under this section on supply or production of a mixture is the person supplying or producing the mixture.
- (8) Where duty under a provision of this Act has been paid on an ingredient of a mixture, the duty charged under this section shall be reduced by the amount of any duty that the Commissioners are satisfied has been paid on the ingredient (but not to a negative amount).
- (9) The Commissioners may exempt a person from liability to pay duty under any provision of this Act in respect of production or supply of a mixture of a kind described in subsection (1)(a), (2)(a) or (3) if satisfied that—
  - (a) the liability was incurred accidentally, and
  - (b) in the circumstances the person should be exempted.”
- (2) In section 20AAB of that Act (mixing of rebated oil: supplementary)—
  - (a) for subsections (1) and (2) substitute—
    - “(1) A person who supplies or produces a mixture on which duty is charged under section 20AAA above must notify the Commissioners of the supply or production—
      - (a) in advance, or
      - (b) within the period of seven days beginning with the date of supply or production.”, and
    - (b) in subsection (3) omit “or (2)”.
- (3) Schedule 2A to that Act shall cease to have effect.
- (4) This section—
  - (a) in so far as it imposes or relates to the charge specified in section 20AAA(1) or (2) of that Act (as substituted by subsection (1) above), shall have effect in relation to anything supplied on or after the date on which this Act is passed,
  - (b) in so far as it imposes or relates to the charge specified in section 20AAA(3) of that Act (as substituted by subsection (1) above), shall have effect in relation to anything produced on or after the date on which this Act is passed, and

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- (c) in so far as it causes sections 20AAA and 20AAB(1) and (2) of, and Schedule 2A to, that Act to cease to have effect in their present form, shall come into force on the day on which this Act is passed.
- (5) But no duty shall be charged on the supply of a mixture under section 20AAA(1) or (2) of that Act (as substituted by subsection (1) above) if duty was charged on the production of the mixture under section 20AAA as it had effect before the date on which this Act is passed.

## 10 Bioethanol

- (1) After section 2AA of the Hydrocarbon Oil Duties Act 1979 (c. 5) (biodiesel) insert—

### “2AB Bioethanol

- (1) In this Act “bioethanol” means a liquid fuel—
  - (a) consisting of ethanol produced from biomass, and
  - (b) capable of being used for the same purposes as light oil.
- (2) In subsection (1)—
  - (a) “liquid” does not include any substance that is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and
  - (b) “biomass” means vegetable and animal substances constituting the biodegradable fraction of—
    - (i) products, wastes and residues from agriculture, forestry and related activities, or
    - (ii) industrial and municipal waste.
- (3) A substance shall be treated as falling within subsection (1)(a) if it—
  - (a) is denatured alcohol for the purposes of section 5 of the Finance Act 1995 (c. 4), and
  - (b) would fall within subsection (1)(a) above (without reliance on this subsection) but for the presence of a component introduced—
    - (i) for the purpose of rendering the substance denatured alcohol, and
    - (ii) in the minimum proportion necessary for that purpose.”
- (2) After section 2A(1A) of that Act (power to amend definitions: biodiesel) insert—
 

“(1B) The Treasury may by order made by statutory instrument amend the definition for the purposes of this Act of “bioethanol”.”
- (3) After section 6AC of that Act (biodiesel: application of provisions relating to hydrocarbon oil) insert—

### “6AD Excise duty on bioethanol

- (1) A duty of excise shall be charged on the setting aside for a chargeable use by any person, or (where it has not already been charged under this section) on the chargeable use by any person, of bioethanol.
- (2) In subsection (1) “chargeable use” means use—
  - (a) as fuel for any engine, motor or other machinery,

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- (b) as an additive or extender in any substance so used, or
- (c) for the production of bioethanol blend.

(3) The rate of duty under this section shall be £0.2852 a litre.

#### **6AE Excise duty on blends of bioethanol and hydrocarbon oil**

- (1) A duty of excise shall be charged on bioethanol blend—
- (a) imported into the United Kingdom, or
  - (b) produced in the United Kingdom and delivered for home use from a refinery or other premises used for the production of hydrocarbon oil or from any bonded storage for hydrocarbon oil, not being bioethanol blend chargeable with duty under paragraph (a) above.
- (2) In this Act “bioethanol blend” means any mixture that is produced by mixing—
- (a) bioethanol, and
  - (b) hydrocarbon oil not charged with excise duty.
- (3) The rate at which the duty shall be charged on any bioethanol blend shall be a composite rate representing—
- (a) in respect of the proportion of the blend that is hydrocarbon oil, the rate that would be applicable to the blend if it consisted entirely of hydrocarbon oil of the description that went into producing the blend, and
  - (b) in respect of the proportion of the blend that is bioethanol, the rate that would be applicable to the blend if it consisted entirely of bioethanol.
- (4) A reference in subsection (3) to a proportion is to a proportion by volume to the nearest 0.001%.
- (5) If the Commissioners are not satisfied as to the proportion of bioethanol in any bioethanol blend, the rate of duty chargeable shall be the rate that would be applicable to the blend if it consisted entirely of hydrocarbon oil of the description that went into producing the blend.
- (6) Where imported bioethanol blend is removed to a refinery, the duty chargeable under subsection (1) above shall, instead of being charged at the time of the importation of the blend, be charged on the delivery of any goods from the refinery for home use and shall be the same as that which would be payable on the importation of like goods.

#### **6AF Application to bioethanol and bioethanol blend of provisions relating to hydrocarbon oil**

- (1) The Commissioners may by regulations provide for—
- (a) references in this Act, or specified references in this Act, to hydrocarbon oil to be construed as including references to—
    - (i) bioethanol;
    - (ii) bioethanol blend;

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- (b) references in this Act, or specified references in this Act, to duty on hydrocarbon oil to be construed as including references to duty under—
    - (i) section 6AD above;
    - (ii) section 6AE above;
  - (c) bioethanol, or bioethanol blend, to be treated for the purposes of such of the following provisions of this Act as may be specified as if it fell within a specified description of hydrocarbon oil.
- (2) Where the effect of provision made under subsection (1) above is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power.
- (3) In this section “specified” means specified by regulations under this section.
- (4) Regulations under this section may make different provision for different cases.
- (5) Paragraph (b) of subsection (1) above shall not be taken as prejudicing the generality of paragraph (a) of that subsection.”
- (4) In section 6A(1) of that Act (fuel substitutes) for “which is not hydrocarbon oil, biodiesel or bioblend” substitute “which is not—
- (a) hydrocarbon oil,
  - (b) biodiesel,
  - (c) bioblend,
  - (d) bioethanol, or
  - (e) bioethanol blend.”
- (5) At the end of section 11(6) of that Act (rebate on heavy oil: exception) add “ or bioethanol blend ”.
- (6) At the end of section 13AA of that Act (restrictions on use of rebated kerosene) add—
- “(7) Nothing in this section has the effect of allowing a rebate on bioblend or bioethanol blend.”
- (7) In section 14 of that Act (rebate on light oil for use as furnace fuel) after subsection (1) insert—
- “(1A) No rebate shall be allowed under this section in respect of bioethanol blend.”
- (8) In section 22 of that Act (prohibition on use of petrol substitutes on which duty has not been paid)—
- (a) after subsection (1AA) insert—
    - “(1AB) Where any person—
    - (a) puts any bioethanol to a chargeable use (within the meaning of section 6AD above), and
    - (b) knows or has reasonable cause to believe that there is duty charged under section 6AD above on that bioethanol which has not been paid and is not lawfully deferred,
- his putting the bioethanol to that use shall attract a penalty under section 9 of the Finance Act 1994 (c. 9) (civil penalties), and any

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- goods in respect of which a person contravenes this section shall be liable to forfeiture.”, and
- (b) in subsection (1A) for “subsection (1) or (1AA) above.” substitute “subsection (1), (1AA) or (1AB) above.”
- (9) In section 27(1) of that Act (interpretation) after the definition of “biodiesel” insert—
- ““bioethanol” has the meaning given by section 2AB above;
- “bioethanol blend” has the meaning given by section 6AE(2) above;”.
- (10) This section shall come into force on 1st January 2005.
- (11) But no duty shall be charged under section 6AD or 6AE of that Act (inserted by subsection (3) above) in respect of the chargeable use of any goods, or the setting aside of any goods for a chargeable use, if before 1st January 2005—
- (a) the goods were used or set aside for a chargeable use within the meaning of section 6A of that Act, and
- (b) a duty of excise was charged under that section on that use or setting aside.

**Commencement Information**

**I4** S. 10 in force at 1.1.2005, see s. 10(10)

**11 Biodiesel**

- (1) In section 6AA(2) of the Hydrocarbon Oil Duties Act 1979 (c. 5) (excise duty on biodiesel) after paragraph (b) add—
- “(c) for the production of bioblend.”
- (2) This section shall come into force on 1st January 2005.

**Commencement Information**

**I5** S. 11 in force at 1.1.2005, see s. 11(2)

**12 Fuel substitutes**

- (1) For section 6A(2)(b) of the Hydrocarbon Oil Duties Act 1979 (fuel substitutes: additives and extenders) substitute—
- “(b) as an additive or extender in any substance so used.”
- (2) This section shall have effect in relation to anything done on or after the date on which this Act is passed.

**13 Warehousing**

After section 23B of the Hydrocarbon Oil Duties Act 1979 (regulation of traders in controlled oil) insert—

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### “23C Warehousing

- (1) For the purposes of Part VIII of the Customs and Excise Management Act 1979 (c. 2) (warehousing) the substances specified in subsection (4) shall be treated as if they were chargeable with duty (and therefore within the scope of section 92(1)(a) or (c) of that Act) whether or not duty is in fact chargeable.
- (2) The Commissioners may make regulations under section 93 of that Act (warehousing regulations) that relate to a substance specified in subsection (4).
- (3) In respect of a substance specified in subsection (4) which has been or is to be deposited in an excise warehouse by virtue of subsection (2), the Commissioners may—
  - (a) treat the substance, or make provision by regulations for treating the substance, as if duty were chargeable in relation to it by virtue of a specified enactment;
  - (b) make any regulations, or do any other thing, of a kind that they could make or do (whether or not by virtue of a provision of Part VIII of that Act) in respect of a substance deposited in an excise warehouse under Part VIII of that Act.
- (4) The substances referred to in subsection (1) are—
  - (a) petroleum gas,
  - (b) animal fat set aside for use as motor fuel or heating fuel,
  - (c) vegetable fat set aside for use as motor fuel or heating fuel,
  - (d) non-synthetic methanol set aside for use as motor fuel or heating fuel,
  - (e) biodiesel,
  - (f) a mixture of two or more substances specified in paragraphs (a) to (e), and
  - (g) any other substance specified for the purposes of this section in regulations made by the Commissioners.
- (5) In subsection (4)—
  - (a) “petroleum gas” means any hydrocarbon which—
    - (i) is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and
    - (ii) is not natural gas (as defined in paragraph (b) below),
  - (b) “natural gas” means gas with a methane content of not less than 80%,
  - (c) “animal fat” means a triglyceride of animal origin,
  - (d) “vegetable fat” means a triglyceride of vegetable origin, and
  - (e) “non-synthetic methanol” means methyl alcohol of non-synthetic origin.
- (6) Regulations under subsection (4)(g)—
  - (a) may make provision only if the Commissioners think it necessary or expedient for a purpose connected with Council Directive [92/12/EEC](#) on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products,
  - (b) may, in particular, make provision by reference to that Directive or any other Community instrument, and



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- (c) may, in particular, make provision by reference to the purpose for which a substance is intended to be used.”

#### **14 Treatment of certain energy products**

- (1) Section 10 of the Finance Act 1993 (c. 34) (application of Hydrocarbon Oil Duties Act 1979 to certain substances) shall be amended as follows.
- (2) In subsection (1) for “mineral oil” substitute “ energy product ”.
- (3) In subsection (2)—
- (a) after “as the equivalent of hydrocarbon oil” insert “ or road fuel gas ”, and
  - (b) for “as if it fell within such description of hydrocarbon oil” substitute “ as if it fell within such class or description of substance ”.
- (4) In subsection (3)—
- (a) for “a mineral oil” substitute “ an energy product ”, and
  - (b) for “hydrocarbon oil of the description” substitute “ the substance ”.
- (5) For subsection (4) substitute—
- “(4) In this section “energy product” means a substance which—
- (a) is an energy product for the purposes of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, and
  - (b) is not (apart from as a result of this section) hydrocarbon oil or road fuel gas within the meaning of the 1979 Act.”
- (6) For subsection (6) substitute—
- “(6) Where a duty of excise is charged on a substance under a provision of the 1979 Act by virtue of an order under this section, no duty shall be charged on the substance under any other provision of that Act.”
- (7) For the heading substitute “ Extension of Hydrocarbon Oil Duties Act 1979 to energy products ”.

#### *Betting and gaming duties*

#### **15 General betting duty: pool betting**

- (1) The Betting and Gaming Duties Act 1981 (c. 63) shall be amended as follows.
- (2) For section 4 (pool betting, the Tote, &c.) substitute—

##### **“4 Pool betting on horse and dog races**

- (1) General betting duty shall be charged on pool betting which—
- (a) relates only to horse racing or dog racing, and
  - (b) is not on-course betting.
- (2) But subsection (1) does not apply to pool betting if—
- (a) the promoter is outside the United Kingdom, and

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- (b) it is conducted otherwise than by means of a totalisator situated in the United Kingdom.
- (3) The amount of duty charged under subsection (1) in respect of bets made by means of facilities provided by a person in an accounting period shall be 15 per cent. of the amount of his net stake receipts for the period.”
- (3) In section 5(7) (net stake receipts) and section 5B(4) (liability to pay) for “section 4(1) to (3)” substitute “ section 4(1) ”.
- (4) In section 7B (conditions for charging pool betting duty)—
  - (a) in subsection (2)(b) omit “the bet is made otherwise than by means of a totalisator and”, and
  - (b) for subsection (3)(a) and (b) substitute—
    - “(a) made wholly in relation to horse racing or dog racing.”.
- (5) In section 9(2)(a) (prohibitions for protection of revenue)—
  - (a) at the end of sub-paragraph (i) add “ or ”, and
  - (b) in sub-paragraph (ii) for “in the case of bets made otherwise than by means of a totalisator,” substitute “ in any case, ”.
- (6) In section 10(2) (definition of pool betting) for the definition of “totalisator odds” substitute—
  - ““totalisator odds” means the odds paid on bets made—
    - (a) by means of a totalisator, and
    - (b) at the scene of the event to which the bets relate.”
- (7) In section 12(4) (interpretation)—
  - (a) for the definition of “bookmaker” substitute—
    - ““bookmaker” means a person who—
      - (a) carries on the business of receiving or negotiating bets or conducting pool betting operations (whether as principal or agent and whether regularly or not), or
      - (b) holds himself out or permits himself to be held out, in the course of a business, as a person within paragraph (a);”;
  - (b) for the definition of “on-course bet” substitute—
    - ““on-course bet” has the meaning given by subsection (4A);”, and
  - (c) omit the definition of “sponsored pool betting”.
- (8) After section 12(4) insert—
  - “(4A) A bet is an on-course bet for the purposes of this Part of this Act if it—
    - (a) is made by a person present at a horse or dog race meeting or by a bookmaker,
    - (b) is not made through an agent of an individual making the bet or through an intermediary, and
    - (c) is made—
      - (i) with a bookmaker present at the meeting, or

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(ii) by means of a totalisator situated in the United Kingdom, using facilities provided at the meeting by or by arrangement with the person operating the totalisator.”

(9) In paragraph 10(1) of Schedule 1 (betting duties: power of entry) omit the words “, or that facilities for sponsored pool betting on those events are being or are to be provided,”.

(10) The amendments made by this section have effect in relation to accounting periods ending on or after the date of the passing of this Act.

## 16 Rates of gaming duty

(1) For the Table in section 11(2) of the Finance Act 1997 (c. 16) (rates of gaming duty) substitute—

“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £516,500	2.5 per cent.
The next £1,146,500	12.5 per cent.
The next £1,146,500	20 per cent.
The next £2,007,500	30 per cent.
The remainder	40 per cent.”

(2) This section has effect in relation to accounting periods beginning on or after 1st April 2004.

### *Amusement machine licence duty*

## 17 Amusement machine licence duty: rates

(1) In section 23 of the Betting and Gaming Duties Act 1981 (c. 63) (amount of duty payable on amusement machine licence) for the Table in subsection (2) substitute—

“TABLE

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
<i>Period (in months) for which licence granted</i>	<i>Category</i>	<i>Category</i>	<i>Category</i>	<i>Category</i>	<i>Category</i>
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>
	<i>£</i>	<i>£</i>	<i>£</i>	<i>£</i>	<i>£</i>
1	30	80	85	170	230
2	50	155	165	330	445

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3	75	225	245	480	650
4	95	295	315	625	845
5	120	355	380	755	1,020
6	140	410	445	875	1,185
7	160	465	500	990	1,340
8	185	515	555	1,095	1,480
9	205	560	600	1,190	1,610
10	225	600	645	1,275	1,725
11	240	635	680	1,350	1,825
12	250	665	715	1,415	1,915”

- (2) This section has effect in relation to any amusement machine licence for which an application is received by the Commissioners of Customs and Excise on or after 22nd March 2004.

#### *Vehicle excise duty*

### **18 Fee for payment of duty by credit card**

- (1) The Vehicle Excise and Registration Act 1994 (c. 22) is amended as follows.  
 (2) After section 19B insert—

#### **“19C Fee for payment of duty by credit card**

- (1) This section applies where—
- (a) a person applies for a vehicle licence or a trade licence, and
  - (b) the Secretary of State, or an authorised body, accepts a credit card payment in respect of the duty payable on the licence.
- (2) Before issuing the licence, the Secretary of State, or the authorised body, shall require—
- (a) the applicant, or
  - (b) a person acting on behalf of the applicant,
- to pay to him, or it, such fee (if any) in respect of the acceptance of the credit card payment as may be prescribed by, or determined in accordance with, regulations.
- (3) In cases of such descriptions as the Secretary of State may, with the consent of the Treasury, determine, the whole or a part of a fee paid under this section may be refunded.
- (4) In this section—
- “authorised body” means a body (other than a Northern Ireland department) which is authorised by the Secretary of State to act as his agent for the purpose of issuing licences;
- “credit card” has such meaning as may be prescribed by regulations;

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“regulations” means regulations made by the Secretary of State.”.

- (3) In section 58 (fees prescribed by regulations) in subsection (1) (fees prescribed by regulations under certain provisions to be of amount approved by Treasury) for “or 14(4)(b)” substitute “, 14(4)(b) or 19C(2) ”.
- (4) This section has effect in relation to licences issued on or after such day as the Secretary of State may by order made by statutory instrument appoint.

## PART 2

### VALUE ADDED TAX

#### 19 Disclosure of VAT avoidance schemes

- (1) Schedule 2 (which relates to the disclosure of schemes for the avoidance of value added tax) has effect.
- (2) Subsection (1) and that Schedule—
  - (a) come into force on the passing of this Act, so far as is necessary for enabling the making of any orders or regulations by virtue of that Schedule, and
  - (b) otherwise, come into force on such day as the Treasury may by order made by statutory instrument appoint.

#### Commencement Information

- I6** S. 19 wholly in force at 1.8.2004; s. 19 in force for specified purposes at Royal Assent, see s. 19(2); s. 19 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

#### 20 Groups

- (1) After section 43A of the Value Added Tax Act 1994 (c. 23) (groups: eligibility) insert—

##### “43AA Power to alter eligibility for grouping

- (1) The Treasury may by order provide for section 43A to have effect with specified modifications in relation to a specified class of person.
- (2) An order under subsection (1) may, in particular—
  - (a) make provision by reference to generally accepted accounting practice;
  - (b) define generally accepted accounting practice for that purpose by reference to a specified document or instrument (and may provide for the reference to be read as including a reference to any later document or instrument that amends or replaces the first);
  - (c) adopt any statutory or other definition of generally accepted accounting practice (with or without modification);
  - (d) make provision by reference to what would be required or permitted by generally accepted accounting practice if accounts, or accounts of a specified kind, were prepared for a person.

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(3) An order under subsection (1) may also, in particular, make provision by reference to—

- (a) the nature of a person;
- (b) past or intended future activities of a person;
- (c) the relationship between a number of persons;
- (d) the effect of including a person within a group or of excluding a person from a group.

(4) An order under subsection (1) may—

- (a) make provision which applies generally or only in specified circumstances;
- (b) make different provision for different circumstances;
- (c) include supplementary, incidental, consequential or transitional provision.”

(2) After section 43C of that Act insert—

**“43D Groups: duplication**

(1) A body corporate may not be treated as a member of more than one group at a time.

(2) A body which is a member of one group is not eligible by virtue of section 43A to be treated as a member of another group.

(3) If—

- (a) an application under section 43B(1) would have effect from a time in accordance with section 43B(4), but
  - (b) at that time one or more of the bodies specified in the application is a member of a group (other than that to which the application relates),
- the application shall have effect from that time, but with the exclusion of the body or bodies mentioned in paragraph (b).

(4) If—

- (a) an application under section 43B(2)(a) would have effect from a time in accordance with section 43B(4), but
- (b) at that time the body specified in the application is a member of a group (other than that to which the application relates),

the application shall have no effect.

(5) Where a body is a subject of two or more applications under section 43B(1) or (2)(a) that have not been granted or refused, the applications shall have no effect.”

(3) In section 43(1) of that Act (effect of treatment as group) for “sections 43A to 43C” substitute “ sections 43A to 43D ”.

(4) In section 43B(1), (2)(a), (5)(a) and (5)(b) and section 43C(3)(b) of that Act (groups: applications for membership and termination of membership) for “under section 43A(1)” substitute “ by virtue of section 43A ”.

(5) In section 97(4) of that Act (orders, &c.: affirmative resolution) after paragraph (c) insert—

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“(ca) an order under section 43AA(1) if as a result of the order any bodies would cease to be eligible to be treated as members of a group;”.

## **21 Reverse charge on gas and electricity supplied by persons outside UK**

(1) After section 9 of the Value Added Tax Act 1994 (c. 23) insert—

### **“9A Reverse charge on gas and electricity supplied by persons outside the United Kingdom**

- (1) This section applies if relevant goods are supplied—
  - (a) by a person who is outside the United Kingdom,
  - (b) to a person who is registered under this Act,for the purposes of any business carried on by the recipient.
- (2) The same consequences follow under this Act (and particularly so much as charges VAT on a supply and entitles a taxable person to credit for input tax) as if—
  - (a) the recipient had himself supplied the relevant goods in the course or furtherance of his business, and
  - (b) that supply were a taxable supply.
- (3) But supplies which are treated as made by the recipient under subsection (2) are not to be taken into account as supplies made by him when determining any allowance of input tax in his case under section 26(1).
- (4) In applying subsection (2) the supply of relevant goods treated as made by the recipient shall be assumed to have been made at a time to be determined in accordance with regulations prescribing rules for attributing a time of supply in cases to which this section applies.
- (5) “Relevant goods” means gas supplied through the natural gas distribution network, and electricity.
- (6) Whether a person is outside the United Kingdom is to be determined in accordance with an order made by the Treasury.”

(2) This section has effect in relation to supplies made on or after 1st January 2005.

## **22 Use of stock in trade cars for consideration less than market value**

- (1) The Value Added Tax Act 1994 (c. 23) is amended as follows.
- (2) In Schedule 6 (valuation: special cases) after paragraph 1 (supply to connected person at less than market value etc) insert—

- “1A (1) Where—
- (a) the value of a supply made by a taxable person for a consideration is (apart from this sub-paragraph) less than its open market value,
  - (b) the taxable person is a motor manufacturer or motor dealer,
  - (c) the person to whom the supply is made is—
    - (i) an employee of the taxable person,

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- (ii) a person who, under the terms of his employment, provides services to the taxable person, or
  - (iii) a relative of a person falling within sub-paragraph (i) or (ii) above,
  - (d) the supply is a supply of services by virtue of sub-paragraph (4) of paragraph 5 of Schedule 4 (business goods put to private use etc),
  - (e) the goods mentioned in that sub-paragraph consist of a motor car (whether or not any particular motor car) that forms part of the stock in trade of the taxable person, and
  - (f) the supply is not one to which paragraph 1 above applies,
- the Commissioners may direct that the value of the supply shall be taken to be its open market value.
- (2) A direction under this paragraph shall be given by notice in writing to the person making the supply, but no direction may be given more than 3 years after the time of the supply.
- (3) A direction given to a person under this paragraph in respect of a supply made by him may include a direction that the value of any supply—
- (a) which is made by him after the giving of the notice, or after such later date as may be specified in the notice, and
  - (b) as to which the conditions in paragraphs (a) to (f) of sub-paragraph (1) above are satisfied,
- shall be taken to be its open market value.
- (4) In this paragraph—
- “motor car” means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—
- (a) is constructed or adapted solely or mainly for the carriage of passengers, or
  - (b) has to the rear of the driver’s seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows,
- but does not include any vehicle excluded by sub-paragraph (5) below;
- “motor dealer” means a person whose business consists in whole or in part of obtaining supplies of, or acquiring from another member State or importing, new or second-hand motor cars for resale with a view to making an overall profit on the sale of them (whether or not a profit is made on each sale);
- “motor manufacturer” means a person whose business consists in whole or in part of producing motor cars including producing motor cars by conversion of a vehicle (whether a motor car or not);
- “relative” means husband, wife, brother, sister, ancestor or lineal descendant;
- “stock in trade” means new or second-hand motor cars (other than second-hand motor cars which are not qualifying motor cars within sub-paragraph (6) below) which are—



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- (a) produced by a motor manufacturer or, as the case may require, supplied to or acquired from another member State or imported by a motor dealer, for the purpose of resale, and
- (b) intended to be sold—
  - (i) by a motor manufacturer within 12 months of their production, or
  - (ii) by a motor dealer within 12 months of their supply, acquisition from another member State or importation, as the case may require,

and such motor cars shall not cease to be stock in trade where they are temporarily put to a use in the motor manufacturer's or, as the case may be, the motor dealer's business which involves making them available for private use.

- (5) The vehicles excluded by this sub-paragraph are—
  - (a) vehicles capable of accommodating only one person;
  - (b) vehicles which meet the requirements of Schedule 6 to the Road Vehicles (Construction and Use) Regulations 1986 and are capable of carrying twelve or more seated persons;
  - (c) vehicles of not less than three tonnes unladen weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986);
  - (d) vehicles constructed to carry a payload (the difference between—
    - (i) a vehicle's kerb weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986), and
    - (ii) its maximum gross weight (as defined in that Table)),  
of one tonne or more;
  - (e) caravans, ambulances and prison vans;
  - (f) vehicles constructed for a special purpose other than the carriage of persons and having no other accommodation for carrying persons than such as is incidental to that purpose.
- (6) For the purposes of this paragraph a motor car is a “qualifying motor car” if—
  - (a) it has never been supplied, acquired from another member State, or imported in circumstances in which the VAT on that supply, acquisition or importation was wholly excluded from credit as input tax by virtue of an order under section 25(7) (as at 17th March 2004 see article 7 of the Value Added Tax (Input Tax) Order 1992); or
  - (b) a taxable person has elected under such an order for it to be treated as such.
- (7) The Treasury may by order amend any of the definitions in this paragraph.”.

- (3) In section 83(v) (appeal to tribunal with respect to any direction under paragraph 1 or 2 of Schedule 6 etc) after “paragraph 1” insert “, 1A ”.

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- (4) In section 97 (orders, rules and regulations) in subsection (4) (orders to which the House of Commons affirmative procedure in subsection (3) applies) after paragraph (e) insert—
- “(f) an order under paragraph 1A(7) of Schedule 6;”.
- (5) The amendment made by subsection (2) applies in relation to any use or availability for use on or after the appointed day (whatever the date of the directions mentioned in paragraph 5(4) of Schedule 4 to the Value Added Tax Act 1994 (c. 23)).
- (6) In subsection (5) “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint.

#### Commencement Information

- I7** S. 22(2) has effect as specified by [The Finance Act 2004, section 22\(2\), \(Appointed Day\) Order 2004 \(S.I. 2004/3104\)](#), [art. 2](#)

## PART 3

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

## CHAPTER 1

### INCOME TAX AND CORPORATION TAX CHARGE AND RATE BANDS

#### *Income tax*

#### **23 Charge and rates for 2004-05**

Income tax shall be charged for the year 2004-05, and for that year—

- (a) the starting rate shall be 10%;
- (b) the basic rate shall be 22%;
- (c) the higher rate shall be 40%.

#### **24 Personal allowances for those aged 65 or more**

(1) For the year 2004-05—

- (a) the amount specified in section 257(2) of the Taxes Act 1988 (claimant aged 65 or more) shall be £6,830; and
- (b) the amount specified in section 257(3) of that Act (claimant aged 75 or more) shall be £6,950.

(2) Accordingly, section 257C(1) of that Act (indexation), so far as it relates to the amounts so specified, does not apply for that year.

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## Corporation tax

### 25 Charge and main rate for financial year 2005

Corporation tax shall be charged for the financial year 2005 at the rate of 30%.

### 26 Small companies' rate and fraction for financial year 2004

For the financial year 2004—

- (a) the small companies' rate shall be 19%, and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be 11/400ths.

### 27 Corporation tax starting rate and fraction for financial year 2004

For the financial year 2004—

- (a) the corporation tax starting rate shall be 0%, and
- (b) the fraction mentioned in section 13AA of the Taxes Act 1988 (marginal relief for small companies) shall be 19/400ths.

### 28 The non-corporate distribution rate

- (1) In Part 1 of the Taxes Act 1988 (the charge to tax), after section 13AA (the starting rate of corporation tax) insert—

#### “13AB The non-corporate distribution rate

- (1) This section applies where in any accounting period—
  - (a) a company makes (or is treated as making) one or more non-corporate distributions, and
  - (b) the company's underlying rate of corporation tax is less than the non-corporate distribution rate.
- (2) The rate of tax to be applied in calculating the corporation tax chargeable on the company's basic profits for the accounting period is—
  - (a) in relation to so much of the company's basic profits as is matched with a non-corporate distribution, the non-corporate distribution rate, and
  - (b) in relation to the remainder of the company's basic profits, the company's underlying rate of corporation tax.
- (3) The “non-corporate distribution rate” is such rate as Parliament may from time to time determine.
- (4) Schedule A2 to this Act makes provision supplementing this section, in particular—
  - (a) defining “non-corporate distribution” and a company's “underlying rate of corporation tax”,
  - (b) as to the matching of a company's profits and non-corporate distributions, and

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- (c) providing for non-corporate distributions to be allocated to other companies in certain circumstances.”.
- (2) After Schedule A1 to the Taxes Act 1988 insert as Schedule A2 the Schedule set out in Schedule 3 to this Act.
- (3) In section 468(1A) of the Taxes Act 1988 (authorised unit trusts), for “and 13AA” substitute “ , 13AA and 13AB ”.
- (4) Section 13AB of and Schedule A2 to the Taxes Act 1988 have effect in relation to distributions made on or after 1st April 2004.
- (5) For the purposes of applying the provisions of that section and Schedule to a distribution made in an accounting period beginning before 1st April 2004 and ending on or after that date—
  - (a) the parts of the accounting period falling in different financial years shall be treated as separate accounting periods, and
  - (b) the profits of the period shall be apportioned between the parts on a time basis according to their respective lengths unless it appears that that method would work unreasonably or unjustly in which case such other method shall be used as appears just and reasonable.
- (6) The non-corporate distribution rate for the financial year 2004 is 19%.

### *Trusts*

## **29 Special rates of tax applicable to trusts**

- (1) Section 686 of the Taxes Act 1988 (accumulation and discretionary trusts: special rates of tax) is amended as follows.
- (2) In subsection (1A) (which sets certain rates of tax in relation to any year of assessment for which income tax is charged)—
  - (a) in paragraph (a) (which sets the Schedule F trust rate at 25 per cent) for “25 per cent” substitute “ 32.5 per cent ”, and
  - (b) in paragraph (b) (which sets the rate applicable to trusts at 34 per cent) for “34 per cent” substitute “ 40 per cent ”.
- (3) The amendments made by subsection (2) have effect in relation to the year 2004-05 and subsequent years of assessment.
- (4) Schedule 4 to this Act (which makes amendments relating to the rate applicable to trusts) shall have effect.

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## CHAPTER 2

### CORPORATION TAX: GENERAL

#### *Transfer pricing*

#### **30 Provision not at arm's length: transactions between UK taxpayers etc**

- (1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.
- (2) In paragraph 5 (advantage in relation to United Kingdom taxation)—
  - (a) in sub-paragraph (1) omit “(but subject to sub-paragraph (2) below)”;
  - (b) omit sub-paragraphs (2) to (6); and
  - (c) at the end of the paragraph insert—
    - “(7) In determining for the purposes of sub-paragraph (1) above the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a person who is not resident in the United Kingdom, there shall be left out of account any income of that person which is—
      - (a) excluded income for the purposes of section 128 of the Finance Act 1995 (limit on income chargeable on non-residents: income tax), or
      - (b) income to which section 151 of the Finance Act 2003 applies (non-resident companies: extent of charge to income tax).”.
- (3) Paragraph 6 (elimination of double counting) is amended as follows.
- (4) For sub-paragraph (1) (application of paragraph) substitute—
  - “(1) This paragraph applies where—
    - (a) only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision; and
    - (b) the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities.”.
- (5) In sub-paragraph (2) (application, on a claim, of arm's length provision to disadvantaged person)—
  - (a) in the opening words (subjection to paragraph 7 etc)—
    - (i) for “paragraph”, where first occurring, substitute “ paragraphs ”, and
    - (ii) after “7” insert “ and 8 ”;
  - (b) in paragraph (a) (computation on basis of arm's length provision), for “the disadvantaged person shall be entitled to have his profits and losses computed” substitute “ the profits and losses of the disadvantaged person shall be computed ”.
- (6) After paragraph 7 insert—

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**7A “Balancing payments between affected persons: no charge to, or relief from, tax**

- (1) This paragraph applies where—
  - (a) the circumstances are as described in paragraph 6(1) above,
  - (b) one or more payments (the “balancing payments”) are made to the advantaged person by the disadvantaged person, and
  - (c) the sole or main reason for making those payments is that paragraph 1(2) above applies.
- (2) To the extent that the balancing payments do not in the aggregate exceed the amount of the available compensating adjustment, those payments—
  - (a) shall not be taken into account in computing profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as distributions or charges on income.
- (3) In this paragraph “the available compensating adjustment” means the difference between PL1 and PL2 where—
 

PL1 is the profits and losses of the disadvantaged person computed for tax purposes on the basis of the actual provision, and

PL2 is the profits and losses of the disadvantaged person as they fall (or would fall) to be computed for tax purposes on a claim under paragraph 6 above,

for this purpose taking PL1 or PL2 as a positive amount if it is an amount of profits and as a negative amount if it is an amount of losses.”.
- (7) In paragraph 11 (special provision for companies carrying on ring fence trades) in sub-paragraph (3) (Schedule to have effect as if ring fence trade and other activities were carried on by separate persons etc)—
  - (a) at the end of paragraph (c) insert “ and ”;
  - (b) omit paragraph (e) (Schedule to have effect as if paragraphs 5 to 7 were omitted).
- (8) In paragraph 12 (appeals) in sub-paragraph (3)(b) for “each of whom is a person in relation to whom the condition set out in paragraph 5(3) above is satisfied” substitute “ each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities ”.
- (9) Schedule 5 to this Act (which makes amendments to other enactments in relation to transactions not at arm’s length) has effect.

**31 Exemptions for dormant companies and small and medium-sized enterprises**

- (1) Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) is amended as follows.
- (2) In paragraph 1 (basic rule on transfer pricing etc) in sub-paragraph (2) (profits and losses to be computed as if the arm’s length provision had been made) after “Subject to paragraphs” insert “ 5A, 5B, ”.

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(3) After paragraph 5 insert—

**5A “Exemption for dormant companies**

- (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which satisfies the condition in sub-paragraph (2) below.
- (2) The condition is that—
  - (a) the company was dormant throughout the pre-qualifying period, and
  - (b) apart from paragraph 1 above, the company has continued to be dormant at all times since the end of the pre-qualifying period.
- (3) In sub-paragraph (2) above “the pre-qualifying period” means—
  - (a) if there is an accounting period of the company that ends on 31st March 2004, that accounting period, or
  - (b) if there is no such accounting period, the period of 3 months ending with that date.
- (4) In this paragraph “dormant” has the same meaning as in section 249AA of the Companies Act 1985 (see subsections (4) to (7) of that section).”.

(4) After paragraph 5A insert—

**5B “Exemption for small or medium-sized enterprises**

- (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see paragraph 5D below).
- (2) Exceptions to sub-paragraph (1) above are provided—
  - (a) in the case of a small enterprise, by sub-paragraphs (3) and (4) below, and
  - (b) in the case of a medium-sized enterprise, by sub-paragraphs (3) and (4) and paragraph 5C below.
- (3) The first exception is where the small or medium-sized enterprise elects for sub-paragraph (1) above not to apply in relation to the chargeable period.  
Any such election is irrevocable.
- (4) The second exception is where, at the time when the actual provision is or was made or imposed,—
  - (a) the other affected person, or
  - (b) a party to a relevant transaction (see sub-paragraph (5) below),  
is a resident (see sub-paragraph (6) below) of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).
- (5) For the purposes of sub-paragraph (4) above, a “party to a relevant transaction” is a person who, in a case where the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions.

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- (6) In this paragraph “resident”, in relation to a territory,—
  - (a) means a person who, under the laws of that territory, is liable to tax there by reason of his domicile, residence or place of management, but
  - (b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.
- (7) The definitions of “qualifying territory” and “non-qualifying territory” are in paragraph 5E below.

### 5C Additional provisions for medium-sized enterprises

- (1) Paragraph 5B(1) above does not apply as respects any provision made or imposed if—
  - (a) the potentially advantaged person in question is a medium-sized enterprise for the chargeable period in question, and
  - (b) the Board gives that person a notice under this sub-paragraph (a “transfer pricing notice”) requiring him to compute the profits and losses of that chargeable period in accordance with paragraph 1(2) above in the case of that provision.
- (2) A transfer pricing notice may be given in respect of —
  - (a) any provision specified, or of a description specified, in the notice, or
  - (b) every provision in relation to which the assumption in paragraph 1(2) above would fall to be made apart from paragraph 5B(1) above.
- (3) A transfer pricing notice may be given only after a notice of enquiry has been given to the potentially advantaged person in respect of his tax return for the chargeable period.
- (4) A transfer pricing notice must identify the officer of the Board to whom any notice of appeal under this paragraph is to be given.
- (5) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only on the grounds that the condition in sub-paragraph (1)(a) above is not satisfied.
- (6) Any such appeal must be brought by giving written notice of appeal to the officer of the Board identified for the purpose in the transfer pricing notice in accordance with sub-paragraph (4) above.
- (7) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.
- (8) A person to whom a transfer pricing notice is given may amend his tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—
  - (a) the day on which the notice is given, or
  - (b) if he appeals against the notice, the day on which the appeal is finally determined or abandoned.
- (9) Where a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—



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- (a) the end of the period of 90 days specified in sub-paragraph (8) above, or
  - (b) the earlier amendment of the tax return for the purpose of complying with the notice.
- (10) So far as relating to any provision made or imposed by or in relation to a person—
- (a) who is a medium-sized enterprise for a chargeable period,
  - (b) who does not make an election under paragraph 5B(3) above for that period, and
  - (c) who is not excepted from paragraph 5B(1) above by virtue of paragraph 5B(4) above in relation to that provision for that period,
- the tax return required to be made for that period is a return that disregards paragraph 1(2) above.
- (11) Sub-paragraph (10) above does not prevent a tax return for a period becoming incorrect if, in the case of any provision made or imposed,—
- (a) a transfer pricing notice is given which has effect in relation to that provision for that period,
  - (b) the return is not amended in accordance with sub-paragraph (8) above for the purpose of complying with the notice, and
  - (c) the return ought to have been so amended.
- (12) In this paragraph—
- “closure notice” means a notice under—
- (a) section 28A or 28B of the Management Act, or
  - (b) paragraph 32 of Schedule 18 to the Finance Act 1998;
- “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule;
- “notice of enquiry” means a notice under—
- (a) section 9A or 12AC of the Management Act, or
  - (b) paragraph 24 of Schedule 18 to the Finance Act 1998;
- “tax return” means—
- (a) a return under section 8, 8A or 12AA of the Management Act, or
  - (b) a company tax return.

## 5D Meaning of “small enterprise” and “medium-sized enterprise”

- (1) In this Schedule—
- (a) “small enterprise” means a small enterprise as defined in the Annex to the Commission Recommendation,
  - (b) “medium-sized enterprise” means an enterprise which—
    - (i) falls within the category of micro, small and medium-sized enterprises as defined in that Annex, and
    - (ii) is not a small enterprise as defined in that Annex,but for these purposes that Annex has effect with the modifications set out in sub-paragraphs (3) to (6) of this paragraph.
- (2) In this paragraph—

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“the Annex” means the Annex to the Commission Recommendation;

“the Commission Recommendation” means Commission Recommendation 2003/361/EC of 6th May 2003 (concerning the definition of micro, small and medium-sized enterprises).

- (3) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) shall be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Schedule whether—
  - (a) that enterprise, or
  - (b) any other enterprise (including that of the liquidator or administrator), is a small or medium-sized enterprise.
- (4) Article 3 of the Annex shall have effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).
- (5) The first sentence of Article 4(1) of the Annex shall have effect as if the data to apply to—
  - (a) the headcount of staff, and
  - (b) the financial amounts,
 were the data relating to the chargeable period in paragraph 5B(1) above (instead of the period described in that sentence) and calculated on an annual basis.
- (6) Article 4 of the Annex shall have effect with the omission of the following provisions—
  - (a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts);
  - (b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods);
  - (c) paragraph 3 (bona fide estimate in case of newly established enterprise).

## 5E Meaning of “qualifying territory” and “non-qualifying territory”

- (1) In this Schedule—
 

“non-qualifying territory” means any territory which is not a qualifying territory;

“qualifying territory” means—

  - (a) the United Kingdom, or
  - (b) any territory as respects which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that—
  - (a) arrangements to which section 788 applies (double taxation relief by agreement with other territories) have been made in relation to the territory;
  - (b) those arrangements contain a non-discrimination provision (see subparagraphs (4) and (5) below); and

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- (c) the territory is not designated as a non-qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.
- (3) Condition 2 is that—
- (a) arrangements to which section 788 applies have been made in relation to the territory; and
  - (b) the territory is designated as a qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.
- (4) For the purposes of this paragraph a “non-discrimination provision”, in relation to any arrangement to which section 788 applies, is a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—
- (a) any taxation, or
  - (b) any requirement connected with taxation,
- which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.
- (5) In this paragraph, “national”, in relation to a contracting state, includes—
- (a) any individual possessing the nationality or citizenship of the contracting state,
  - (b) any legal person, partnership or association deriving its status as such from the laws in force in that contracting state.
- (6) A statutory instrument containing regulations under this paragraph shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”.
- (5) In paragraph 14(1) (general interpretation) insert each of the following definitions at the appropriate place—
- ““medium-sized enterprise” shall be construed in accordance with paragraph 5D above;”;
  - ““non-qualifying territory” has the meaning given by paragraph 5E above;”;
  - ““qualifying territory” has the meaning given by paragraph 5E above;”;
  - ““small enterprise” shall be construed in accordance with paragraph 5D above;”.

## **32 Special applications of paragraph 6 of Schedule 28AA to the Taxes Act 1988**

- (1) Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) is amended as follows.
- (2) After paragraph 6 insert—
  - 6A “Application of paragraph 6 in relation to transfers of trading stock etc**
  - (1) Paragraph 6(2)(a) above does not affect the credits to be brought into account by the disadvantaged person in respect of—
    - (a) closing trading stock, or

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- (b) closing work in progress in a trade,  
for accounting periods ending on or after the last day of the relevant accounting period of the advantaged person.
  - (2) For the purposes of sub-paragraph (1) above, the relevant accounting period of the advantaged person is the accounting period in which the actual provision was made or imposed.
  - (3) For the purposes of this paragraph “trading stock”, in relation to any trade, has the same meaning as it has for the purposes of section 100 (valuation of trading stock at discontinuance of trade) (see subsection (2) of that section).”.
- (3) After paragraph 6A insert—

**6B “Compensating adjustment where advantaged person is a controlled foreign company**

- (1) This paragraph applies in any case where—
    - (a) the actual provision is provision made or imposed in relation to a controlled foreign company,
    - (b) in determining for the purposes of Chapter 4 of Part 17 the amount of that company’s chargeable profits for an accounting period, its profits and losses fall to be computed in accordance with paragraph 1(2) above in the case of that provision,
    - (c) the whole of those chargeable profits fall to be apportioned under section 747(3) to one or more companies resident in the United Kingdom, and
    - (d) tax is chargeable by virtue of section 747(4) in respect of the whole of those chargeable profits, as so apportioned to those companies.
  - (2) Where this paragraph applies, paragraph 6 above shall have effect as if the controlled foreign company were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.
  - (3) In the application of paragraph 6 above by virtue of this paragraph—
    - (a) references to the advantaged person in sub-paragraphs (4)(a) and (b), (5)(a) and (b) and (6)(b) of that paragraph include a reference to any of the companies mentioned in sub-paragraph (1)(c) above, and
    - (b) references to corporation tax include a reference to tax chargeable by virtue of section 747(4).
  - (4) In this paragraph—
    - “controlled foreign company” has the same meaning as in Chapter 4 of Part 17;
    - “accounting period”, in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17.”.
- (4) In paragraph 13 (saving for provisions relating to capital allowances and capital gains) at the beginning insert “(1) Subject to sub-paragraph (2) below,” and at the end add—
- “(2) Nothing in sub-paragraph (1) above applies to paragraph 6 above.”.

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*Penalties: temporary relaxation*

**33 Provision not at arm's length: temporary relaxation of liability to penalty**

- (1) This section has effect in relation to—
  - (a) the years of assessment 2004-05 and 2005-06, and
  - (b) accounting periods beginning on or after 1st January 2004 and ending on or before 31st March 2006,and in the following provisions of this section “relevant period” means any of those years of assessment or accounting periods.
- (2) In this section “records relating to an arm's length provision” means such records as might have been requisite for the purpose of making and delivering a correct and complete return, so far as relating to the determination of the provision asserted to be the arm's length provision for the purposes of Schedule 28AA to the Taxes Act 1988 in a case where that Schedule applies.
- (3) In relation to any relevant period, the following provisions (which provide for penalties for failure to keep and preserve records for purposes of returns)—
  - (a) section 12B(5) of the Taxes Management Act 1970 (c. 9), and
  - (b) paragraph 23 of Schedule 18 to the Finance Act 1998 (c. 36),do not apply if the records which the person in question fails to keep or preserve are records relating to an arm's length provision.
- (4) In the application of subsection (2) in relation to paragraph 23 of Schedule 18 to the Finance Act 1998—
  - (a) for “requisite” substitute “ needed ”, and
  - (b) for “making and delivering” substitute “ delivering ”.
- (5) Where a person delivers an incorrect return for any relevant period, he shall not be regarded as doing so negligently for the purposes of—
  - (a) section 95 of the Taxes Management Act 1970, or
  - (b) paragraph 20 of Schedule 18 to the Finance Act 1998,by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.
- (6) For the purposes of section 95A of the Taxes Management Act 1970, where a partner delivers an incorrect partnership return for any relevant period—
  - (a) he shall not be regarded as doing so negligently, and
  - (b) his doing so shall not be regarded as attributable to negligent conduct on the part of any relevant partner,by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.
- (7) For the purposes of section 99 of the Taxes Management Act 1970 (penalty for assisting in preparation of incorrect documents) a person shall not be taken to know that a return is incorrect by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

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### *Thin capitalisation*

#### **34 Payments of excessive interest etc**

- (1) In section 209 of the Taxes Act 1988 (meaning of “distribution”) the following provisions shall cease to have effect—
  - (a) in subsection (2), paragraph (da) (interest etc in respect of securities where issuing company is 75% subsidiary of holder etc and the interest represents an amount that would not have been paid but for a special relationship etc); and
  - (b) subsections (8A) to (8F) (application of section 808A(2) to (4) for purposes of paragraph (da) of subsection (2)).
- (2) Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) is amended as follows.
- (3) After paragraph 1 insert—

#### **1A “Provision in relation to securities: determination of arm’s length provision**

- (1) This paragraph applies where—
  - (a) both of the affected persons are companies, and
  - (b) the actual provision is provision in relation to a security issued by one of those companies (“the issuing company”).
- (2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—
  - (a) the question whether the loan would have been made at all in the absence of the special relationship (see sub-paragraph (6) below),
  - (b) the amount which the loan would have been in the absence of the special relationship, and
  - (c) the rate of interest and other terms which would have been agreed in the absence of the special relationship,
 but this is subject to the following provisions of this paragraph.
- (3) In a case where—
  - (a) a company makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of the first company’s business to make loans generally, the fact that it is not part of the first company’s business to make loans generally shall be disregarded in construing sub-paragraph (2) above.
- (4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship (see sub-paragraphs (7) and (8) below).
- (5) The matters are—
  - (a) the appropriate level or extent of the issuing company’s overall indebtedness;

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- (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;
  - (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.
- (6) In this paragraph “special relationship” means any relationship by virtue of which the condition in paragraph 1(1)(b) above is satisfied in the case of the affected persons.
- (7) In this paragraph any reference to a guarantee includes a reference to a surety and to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company he will be paid by, or out of the assets of, one or more companies.
- (8) For the purposes of this paragraph, the cases where one company has a “participatory relationship” with another are those where—
  - (a) one of them is directly or indirectly participating in the management, control or capital of the other; or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of them.
- (9) In this paragraph “security” includes securities not creating or evidencing a charge on assets.
- (10) For the purposes of this paragraph—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced,shall be treated as if payable or given in respect of a security issued for the advance by the company, and references in this paragraph to a security shall be construed accordingly.

## 1B Guarantees etc

- (1) This paragraph applies where the actual provision is made or imposed by means of a series of transactions which include—
  - (a) the issuing of a security by a company which is one of the affected persons (“the issuing company”), and
  - (b) the provision of a guarantee by a company which is the other of those persons.
- (2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—
  - (a) the question whether the guarantee would have been provided at all in the absence of the special relationship,
  - (b) the amount that would have been guaranteed in the absence of the special relationship, and

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- (c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship, but this is subject to the following provisions of this paragraph.
- (3) In a case where—
- (a) a company provides a guarantee in respect of another company with which it has a special relationship, and
- (b) it is not part of the first company’s business to provide guarantees generally,
- the fact that it is not part of the first company’s business to provide guarantees generally shall be disregarded in construing sub-paragraph (2) above.
- (4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.
- (5) The matters are—
- (a) the appropriate level or extent of the issuing company’s overall indebtedness;
- (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;
- (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.
- (6) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—
- (a) sub-paragraph (6) (meaning of special relationship);
- (b) sub-paragraph (7) (construction of references to a guarantee);
- (c) sub-paragraph (8) (meaning of participatory relationship);
- (d) sub-paragraph (9) (meaning of security);
- (e) sub-paragraph (10) (extended meaning of security).”.
- (4) In Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) paragraph 11A (exchange gains and losses where loan not on arm’s length terms) is amended as follows—
- (a) in sub-paragraph (1)(a) for “section 209(2)(da) or (e)(vii)” substitute “section 209(2)(e)(vii) ”;
- (b) in sub-paragraph (1)(b), before “Schedule 28AA” insert “ paragraph 1 of ”;
- (c) omit sub-paragraph (2)(a);
- (d) in sub-paragraph (2)(b), before “Schedule 28AA” insert “ paragraph 1 of ”;
- (e) omit sub-paragraph (3)(a);
- (f) in sub-paragraph (3)(b), omit “in a case falling within paragraph (b) of that sub-paragraph,”;
- (g) in sub-paragraph (5)(b), omit “the terms would have been the same, except that”.



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### 35 Elimination of double counting etc

- (1) Schedule 28AA to the Taxes Act 1988 is amended as follows.
- (2) In paragraph 6 (elimination of double counting) in sub-paragraph (2) (right of disadvantaged person to claim relief, subject to sub-paragraphs (3) to (6) and paragraph 7) before “7” insert “ 6C, 6D, ”.
- (3) After paragraph 6B (which is inserted by section 32) insert—

#### 6C “Claims under paragraph 6 where paragraph 1A applies

- (1) Where paragraph 1A above applies in relation to any provision, this paragraph has effect in relation to that provision.
- (2) A claim under paragraph 6(2) above may be made in accordance with this paragraph.  

For the purposes of this Schedule a “paragraph 6C claim” is a claim under paragraph 6(2) above made in accordance with this paragraph.
- (3) A paragraph 6C claim may be made by—
  - (a) the disadvantaged person, or
  - (b) the advantaged person,but any such claim made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.
- (4) A paragraph 6C claim may be made before or after a computation falling within paragraph 6(3)(a) above has been made.
- (5) A paragraph 6C claim must be made either—
  - (a) at any time before the end of the period mentioned in paragraph 6(5)(a) above, or
  - (b) within the period mentioned in paragraph 6(5)(b) above,but this is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making a claim).
- (6) A paragraph 6C claim is not a claim within paragraph 57 or 58 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).

Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to the Management Act) has effect in relation to a paragraph 6C claim.

- (7) Where—
  - (a) a paragraph 6C claim is made before a computation falling within paragraph 6(3)(a) above has been made,
  - (b) such a computation is subsequently made, and
  - (c) the claim is not consistent with the computation,the affected persons shall be treated as if (instead of the claim actually made) a claim had been made that was consistent with the computation.
- (8) All such adjustments shall be made (whether by discharge or repayment of tax, the making of assessments or otherwise) as are required to give effect to sub-paragraph (7) above.

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(9) Sub-paragraph (8) above has effect notwithstanding any limit on the time within which any adjustment may be made.

(10) Where—

- (a) a paragraph 6C claim is made,
- (b) a return is subsequently made by the advantaged person on the basis mentioned in paragraph 6(3)(a) above, and
- (c) a relevant notice (within the meaning of paragraph 6 above) taking account of such a determination as is mentioned in paragraph 6(4)(b) above is subsequently given to the advantaged person,

sub-paragraph (11) below applies.

(11) Where this sub-paragraph applies, any such amendment of the paragraph 6C claim as may be appropriate in consequence of the determination contained in the relevant notice may be made by—

- (a) the disadvantaged person, or
- (b) the advantaged person,

but any such amendment made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(12) Any such amendment must be made within the period mentioned in paragraph 6(5)(b) above.

But that is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making amendment).

#### **6D    Compensating adjustment for guarantor company etc where paragraph 1B applies**

(1) This paragraph applies in any case where—

- (a) a company (“the issuing company”) has liabilities under a security issued by the company,
- (b) those liabilities are to any extent the subject of a guarantee provided by a company (“the guarantor company”), and
- (c) in computing the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security fall to be reduced (whether or not to nil) under paragraph 1(2) above by virtue of paragraph 1B above.

(2) On the making of a claim in any such case, the guarantor company shall, to the extent of that reduction, be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—

- (a) had issued the security,
- (b) owed the liabilities under it, and
- (c) had paid any interest or other amounts paid under it by the issuing company,

and in computing the profits and losses of the guarantor company for those purposes amounts shall be brought into account accordingly.

This sub-paragraph is subject to the following provisions of this paragraph.

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- (3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person) TD must not exceed TR, where—
- TD is the total of the amounts brought into account by the guarantor companies by virtue of sub-paragraph (2) above, and
- TR is the total amount of the reductions that fall within sub-paragraph (1) (c) above.
- (4) In this paragraph “the loan provision” means the actual provision made or imposed between—
- (a) the issuing company, and
- (b) another company (“the lending company”),
- which is provision in relation to the security.
- (5) Where—
- (a) the guarantor company makes a claim under sub-paragraph (2) above, and
- (b) the lending company makes a claim under paragraph 6 above in respect of the loan provision,
- sub-paragraphs (6) and (7) below apply.
- (6) In determining, in a case where this sub-paragraph applies, the arm's length provision for the purposes of paragraph 6(2)(a) above in relation to the lending company's claim, additional amounts shall be brought into account as credits corresponding to the debits that fall to be brought into account by virtue of sub-paragraph (2) above in relation to the guarantor company.
- (7) If, in a case where this sub-paragraph applies,—
- (a) the lending company makes its claim under paragraph 6 above before the guarantor company makes its claim under sub-paragraph (2) above, and
- (b) the computation on which the lending company's claim is based does not comply with sub-paragraph (6) above,
- the guarantor company's claim shall be disallowed.
- (8) A claim under sub-paragraph (2) above may be made by—
- (a) the guarantor company,
- (b) where there are two or more guarantor companies, those companies acting together, or
- (c) the issuing company,
- but any claim made by the issuing company shall be taken to be made on behalf of the guarantor company or companies.
- (9) Sub-paragraphs (3) to (6) of paragraph 6 above (claims and time limits) shall apply in relation to a claim under sub-paragraph (2) above made by or on behalf of any person or persons as they apply in relation to a claim under that paragraph made by the disadvantaged person, but taking references in those sub-paragraphs—
- (a) to the advantaged person, as references to the issuing company, and
- (b) to the disadvantaged person, as references to the guarantor company or companies.

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(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

- (a) sub-paragraph (7) (construction of references to a guarantee);
- (b) sub-paragraph (9) (meaning of security);
- (c) sub-paragraph (10) (extended meaning of security).

(11) In this paragraph “the Taxes Acts” has the meaning given in section 118(1) of the Management Act.”.

(4) After paragraph 6D insert—

**6E “Certain interest not to be regarded as chargeable under Case III of Schedule D**

Where—

- (a) interest is paid by any person under the actual provision,
- (b) paragraph 1(2) above applies in relation to the actual provision,
- (c) the amount of interest that would have been payable under the arm’s length provision is less than the amount of interest paid under the actual provision (or there would not have been any interest payable),
- (d) the person receiving the interest makes a claim under paragraph 6 above or a paragraph 6C claim,

the interest paid under the actual provision, to the extent that it exceeds the amount of interest that would have been payable under the arm’s length provision, shall not be regarded as chargeable under Case III of Schedule D.”.

(5) In paragraph 14(1) (general interpretation) insert the following definition at the appropriate place—

““paragraph 6C claim” has the meaning given by paragraph 6C(2) above;”.

**36 Balancing payments and elections to pay tax instead**

(1) Schedule 28AA to the Taxes Act 1988 is amended as follows.

(2) After paragraph 7A (which is inserted by section 30) insert—

**7B “Securities: election to discharge tax liability instead of making balancing payments**

(1) This paragraph applies in any case where—

- (a) both of the affected persons are companies,
- (b) the circumstances are as described in paragraph 6(1) above, and
- (c) the actual provision is provision in relation to a security (the “relevant security”).

(2) The disadvantaged person may make an election under this paragraph in respect of the relevant security if the condition in sub-paragraph (3) below is satisfied.

(3) The condition is that—

- (a) the actual provision forms part of a capital market arrangement,

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- (b) the capital market arrangement involves the issue of a capital market investment,
  - (c) the securities that represent the capital market investment are issued wholly or mainly to independent persons (see sub-paragraph (9) below), and
  - (d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.
- (4) An election under this paragraph in respect of the relevant security is an election for the disadvantaged person—
- (a) to make no balancing payment within paragraph 7A above to the advantaged person in respect of the application of paragraph 1(2) above in relation to the relevant security in a chargeable period by virtue of paragraph 1A above, but
  - (b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from the application of paragraph 1(2) above in relation to the relevant security by virtue of paragraph 1A above.
- (5) Where an election under this paragraph has effect in relation to an accounting period of the advantaged person, the tax mentioned in sub-paragraph (4)(b) above—
- (a) shall be recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and
  - (b) shall not be recoverable from the advantaged person.
- (6) Any election under this paragraph in respect of the relevant security—
- (a) must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued,
  - (b) has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods, and
  - (c) is irrevocable.

For the purposes of this sub-paragraph a security issued in a chargeable period beginning before 1st April 2004 shall be treated as if it had been issued in the chargeable period beginning on that date.

- (7) An election under this paragraph by a person is of no effect if the Board give that person a notice under this sub-paragraph refusing to accept the election.
- (8) A notice under sub-paragraph (7) above may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.
- (9) In this paragraph—
- “capital market arrangement” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act);
  - “capital market investment” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act);

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“company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule;

“independent person” means a person—

- (a) who is not the disadvantaged person, and
- (b) who does not have a participatory relationship with either of the affected persons.

- (10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—
  - (a) sub-paragraph (8) (meaning of participatory relationship);
  - (b) sub-paragraph (9) (meaning of security);
  - (c) sub-paragraph (10) (extended meaning of security).”.

(3) After paragraph 7B insert—

**7C “Balancing payments by guarantor to issuer: no charge to, or relief from, tax**

- (1) This paragraph applies in any case where—
  - (a) the circumstances are as described in paragraph 6D(1) above,
  - (b) one or more payments (the “balancing payments”) are made by the guarantor company to the issuing company, and
  - (c) the sole or main reasons for making those payments are that paragraph 1(2) above applies by virtue of paragraph 1B above or that paragraph 6D above applies.
- (2) To the extent that the balancing payments made by all the guarantor companies do not in the aggregate exceed the amount TR in paragraph 6D(3) above (total reductions within paragraph 6D(1)(c) above), those payments—
  - (a) shall not be taken into account in computing for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and
  - (b) shall not for any purpose of the Corporation Tax Acts be regarded as distributions or charges on income.”.

(4) After paragraph 7C insert—

**7D “Guarantees: election to discharge tax liability instead of making balancing payments**

- (1) This paragraph applies where the following conditions are satisfied—
  - (a) both of the affected persons are companies,
  - (b) the circumstances are as described in paragraph 6(1) above,
  - (c) the actual provision falls within paragraph 1B(1) above.
- (2) Sub-paragraphs (2) to (8) of paragraph 7B above apply in a case where this paragraph applies as they apply in a case where that paragraph applies, but with the modifications in sub-paragraphs (3) and (4) below.
- (3) The relevant security is the security in paragraph 1B(1)(a) above.

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- (4) In sub-paragraph (4) (nature of the election)—
- (a) for “paragraph 7A above” substitute “ paragraph 7C below ”;
  - (b) for “paragraph 1A”, in both places, substitute “ paragraph 1B ”.

*Transfer pricing and thin capitalisation: commencement*

### **37 Commencement and transitional provisions**

- (1) In this section “the amending provisions” means—
- (a) sections 30 to 32 (transfer pricing);
  - (b) sections 34 to 36 (thin capitalisation);
  - (c) Schedule 5 (provision not at arm’s length: related amendments).
- (2) The amendments made by those provisions have effect in relation to chargeable periods beginning on or after 1st April 2004 (whenever the actual provision, within the meaning of Schedule 28AA to the Taxes Act 1988, is or was made or imposed).
- (3) Where an accounting period of a company begins before, and ends on or after, 1st April 2004, it shall be assumed for the purposes of the amending provisions, the amendments which they make and subsection (2) that that accounting period (“the straddling period”) consists of two separate accounting periods—
- (a) the first beginning with the straddling period and ending with 31st March 2004, and
  - (b) the second beginning with 1st April 2004 and ending with the straddling period,
- and the company’s profits and losses shall be computed accordingly for tax purposes.
- (4) Where a period of account of any person within the charge to income tax begins before, and ends on or after, 6th April 2004, it shall be assumed for the purposes of the amending provisions, the amendments which they make and subsection (2) that that period (“the straddling period of account”) consists of two separate periods of account—
- (a) the first beginning with the straddling period of account and ending with 5th April 2004, and
  - (b) the second beginning with 6th April 2004 and ending with the straddling period of account,
- and the person’s profits and losses shall be computed accordingly for the purposes of income tax.

*Expenses of companies with investment business and insurance companies*

### **38 Expenses of management: companies with investment business**

- (1) For section 75 of the Taxes Act 1988 (expenses of management: investment companies) substitute—

**“75 Expenses of management: companies with investment business**

- (1) In computing for the purposes of corporation tax the total profits for an accounting period of a company with investment business (see section 130) a

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deduction is to be allowed for any expenses of management of the company's investment business (see subsection (4) below) which are referable to that accounting period in accordance with section 75A.

That is subject to the following provisions of this section.

- (2) A deduction is not to be allowed under subsection (1) above for any expenses to the extent that those expenses are deductible in computing profits apart from this section.
- (3) Expenses of a capital nature are not expenses of management for the purposes of this section except to the extent that they fall to be treated as expenses of management for those purposes by virtue of—
  - (a) subsection (7) below (capital allowances), or
  - (b) any provision of the Tax Acts, other than this section.
- (4) For the purposes of this section, expenses of management are “expenses of management of the company's investment business” to the extent that—
  - (a) the expenses are in respect of so much of the company's business as consists in the making of investments, and
  - (b) the investments concerned are not held by the company for an unallowable purpose during the accounting period (see subsection (5) below),
 and references in this section to the company's investment business shall be construed accordingly.
- (5) For the purposes of subsection (4)(b) above, investments are held by a company for an unallowable purpose during an accounting period to the extent that they are held during the period—
  - (a) for a purpose that is not a business or other commercial purpose of the company, or
  - (b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.
- (6) For the purposes of subsection (1) above, there shall be deducted from the amount that would, apart from this subsection, be deductible under that subsection the amount of any income derived from a source not charged to tax—
  - (a) which the company has in the course of carrying on its investment business, and
  - (b) which, in a case where the company is not resident in the United Kingdom,—
    - (i) the company has in the course of carrying on that business through a permanent establishment in the United Kingdom, and
    - (ii) is such property or rights as are mentioned in section 11(2A)(b),
 but which is not franked investment income.
- (7) For the purposes of this section, there shall be added to a company's expenses of management referable to any accounting period the amount of any allowances falling to be made to the company for that period by virtue of section 15(1)(g) of the Capital Allowances Act (plant and machinery



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allowances) so far as effect cannot be given to them under section 253(2) of that Act.

(8) Subsection (9) below applies in any case where, in an accounting period of a company with investment business, the sum of—

- (a) the expenses of management deductible under subsection (1) above, and
- (b) any charges on income paid in the accounting period, to the extent that they are paid for the purposes of so much of the company's business as consists in the making of investments,

exceeds the amount of the profits from which those expenses and charges are deductible.

(9) In any such case—

- (a) the excess shall be carried forward to the succeeding accounting period; and
- (b) the amount so carried forward to the succeeding accounting period shall be treated for the purposes of this section (including any further application of this subsection) as if it were expenses of management deductible for that accounting period.

(10) Any apportionment falling to be made for the purposes of this section shall be made on a just and reasonable basis.”.

(2) Section 130 of the Taxes Act 1988 (meaning of “investment company” for purposes of Part 4) is amended as follows.

(3) After “In this Part of this Act” insert the following definition “—

“company with investment business” means any company whose business consists wholly or partly in the making of investments;”.

(4) The sidenote to the section accordingly becomes “Meaning of “company with investment business” and “investment company” in Part 4”.

(5) This section has effect in accordance with sections 42 and 43 (commencement and transitional provisions).

### **39 Accounting period to which expenses of management are referable**

(1) After section 75 of the Taxes Act 1988 (which is inserted by section 38) insert—

#### **“75A Accounting period to which expenses of management are referable**

(1) This section has effect for the purpose of determining the accounting period to which expenses of management are referable for the purposes of section 75(1).

(2) Where—

- (a) expenses of management are debited in accounts drawn up by a company for a period of account,
  - (b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and
  - (c) the period of account coincides with an accounting period,
- the expenses of management are referable to that accounting period.

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- (3) Where—
- (a) expenses of management are debited in accounts drawn up by a company for a period of account, and
  - (b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but
  - (c) the period of account does not coincide with an accounting period, subsection (4) below applies.
- (4) Where this subsection applies, the expenses of management—
- (a) shall be apportioned between any accounting periods that fall within the period of account, and
  - (b) are referable to an accounting period to the extent that they are so apportioned to it.
- (5) An apportionment under subsection (4) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.
- (6) Where—
- (a) expenses of management are not referable to an accounting period by virtue of subsections (2) to (5) above, but
  - (b) accounts are drawn up by the company for a period of account, and
  - (c) if the expenses of management had been treated in those accounts in accordance with generally accepted accounting practice, they would fall to be debited in those accounts,
- the expenses of management are referable to the accounting period to which they would have been referable in accordance with subsections (2) to (5) above if they had been so debited in those accounts.
- (7) Where expenses of management are not referable to an accounting period by virtue of subsections (2) to (6) above, they are referable to the accounting period to which they would be referable in accordance with subsections (2) to (5) above on the assumptions in subsection (8) below.
- (8) Those assumptions are—
- (a) that for each accounting period that does not coincide with, or fall within, any period of account, there is a period of account that coincides with that accounting period, and
  - (b) that so much of the expenses of management as would fall to be debited in accordance with generally accepted accounting practice in accounts drawn up by the company for any such deemed period of account are so debited.
- (9) This section is without prejudice to any other provision of the Corporation Tax Acts which provides for amounts to be treated for the purposes of section 75 as expenses of management referable to an accounting period.
- (10) Any reference in this section to expenses of management being debited in accounts is a reference to those expenses being brought into account, in accordance with generally accepted accounting practice, as a debit—
- (a) in the company's profit and loss account, or

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- (b) in a statement of total recognised gains and losses or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

For this purpose “debit” means an amount which for accounting purposes reduces a profit, or increases a loss, for a period of account.”.

- (2) This section has effect in accordance with sections 42 and 43 (commencement and transitional provisions).

#### **40 Expenses of insurance companies**

- (1) For section 76 of the Taxes Act 1988 (expenses of management of insurance companies) substitute—

##### **“76 Expenses of insurance companies**

- (1) In computing for the purposes of corporation tax the profits for any accounting period of a company—
  - (a) which carries on life assurance business, and
  - (b) which is not charged to tax in respect of that business under Case I of Schedule D,

section 75 is not to apply in computing the profits of that business, but a deduction for expenses payable (the “expenses deduction”) is to be allowed in accordance with the following provisions of this section.

See also subsection (14) below for the application of this section in relation to a company which carries on capital redemption business.

- (2) The expenses deduction is to be made from so much of the income and gains of the accounting period referable to basic life assurance and general annuity business as remains after any deduction falling to be made by virtue of paragraph 4(2) of Schedule 11 to the Finance Act 1996 (non-trading deficits on loan relationships).
- (3) For the purposes of this section “expenses payable” means expenses brought into account in line 12, 22 or 25 of Form 40 (the revenue account) in the periodical return of the company for a period of account, but does not include any of the amounts falling within subsection (4), (5) or (6) below.
- (4) The amounts falling within this subsection are the following—
  - (a) reinsurance premiums,
  - (b) refunds of premiums,
  - (c) profit commissions and profit participations (however described),
  - (d) expenses or other amounts payable, to the extent that the company's purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.

For the purposes of paragraph (d) above, it is not one of the business or commercial purposes of a company to incur a liability to pay an amount of commission or other expenses which exceeds the amount which it could reasonably be expected to pay if the company were charged to tax under Case I of Schedule D in respect of its life assurance business.

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- (5) The amounts falling within this subsection are any amounts payable in connection with a policy or contract to—
- (a) a policy holder or annuitant under the policy or contract (except where the policy holder is an insurance company),
  - (b) any other person who is entitled to receive benefits under the policy or contract,
  - (c) any person acting on behalf of a person falling within paragraph (a) or (b) above,
  - (d) the personal representatives of a deceased person who fell within paragraphs (a) to (c) above.

- (6) The amounts falling within this subsection are expenses of a capital nature.

But this subsection does not apply in the case of an amount which, by virtue of any provision of the Tax Acts other than this section, falls to be treated for the purposes of this section as expenses payable which fall to be brought into account at Step 1 in subsection (7) below (the reference to Step 1 being express in the provision).

- (7) The amount of the expenses deduction for an accounting period is found by taking the following steps—

*Step 1*

Find so much of the expenses payable as are—

- (a) attributable to basic life assurance and general annuity business (see subsection (8) below), and
- (b) referable to the accounting period (see subsection (9) below).

*Step 2*

Reduce each of the amounts found at Step 1 by excluding so much of the amount as is—

- (a) deductible in computing income for the purposes of Schedule A,
- (b) deductible by virtue of section 85(2B) of the Finance Act 1989, or
- (c) deductible by virtue of section 121(3) in computing income from the letting of rights to work minerals in the United Kingdom.

*Step 3*

Find the amounts (so far as not included at Step 1) which fall to be treated for the purposes of this section as expenses payable for the accounting period by virtue of any of the following provisions—

- section 432AB(3) (Schedule A loss or an overseas property business loss referable to basic life assurance and general annuity business);
- section 437(1A) (relief for income element of new annuities);
- section 587B(8)(b)(i) (relief for company carrying on life assurance business in relation to gifts of shares and securities);
- paragraph 16(1) of Schedule 7 to the Finance Act 1991 (transitional relief for old annuities);
- paragraph 4(4)(b) of Schedule 11 to the Finance Act 1996 (carried forward non-trading deficit on loan relationships produced by separate computation for basic life assurance and general annuity business);
- section 256(2)(a) of the Capital Allowances Act (capital allowances on plant and machinery used in the management of life assurance business);

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paragraph 23 of Schedule 22 to the Finance Act 2001 (150% relief in respect of the remediation expenditure on contaminated land owned by a company carrying on life assurance business and acquired to be a management asset);

paragraph 13(2) of Schedule 12 to the Finance Act 2002 (125% of relevant expenditure on R&D in the case of a life assurance company);

paragraph 23(2) of Schedule 13 to the Finance Act 2002 (150% of relevant expenditure on research into vaccines in the case of a life assurance company);

paragraph 36(3) of Schedule 29 to the Finance Act 2002 (relief for non-trading loss on intangible fixed assets).

#### *Step 4*

Give effect to the provisions specified in Step 3 by adding together—

- (a) so much of the amounts found at Step 1 as remains after making any reductions at Step 2, and
- (b) the amounts found at Step 3,

and then deduct the amount of any reversal (wherever brought into account) of an expense included at Step 1 in a previous period, to give Subtotal 1.

#### *Step 5*

If the whole or any part of a loss arising to the company in respect of its life assurance business in the accounting period is set off under section 393A or 403(1)—

- (a) find the amount (“amount L”) that is equal to so much of the loss as, in the aggregate, is so set off,
- (b) find the sum (“amount S”) of the amounts by which any losses for that period under section 436 or 439B fall to be reduced under section 434A(2)(b),
- (c) from amount L deduct amount S, to give the adjusted loss deduction,

then reduce Subtotal 1 by deducting from it the adjusted loss deduction, to give Subtotal 2.

#### *Step 6*

Give effect to subsection (6) of section 86 of the Finance Act 1989 (spreading of acquisition expenses) by—

- (a) finding the amount that is equal to six-sevenths of the adjusted amount of the acquisition expenses (within the meaning of that section) for the accounting period, and
- (b) deducting that amount from Subtotal 2,

to give Subtotal 3.

#### *Step 7*

Add together the following amounts—

- (a) Subtotal 3, and
- (b) any amounts carried forward to the accounting period under subsection (12) or (13) below (unrelieved excesses from earlier accounting periods),

to give Subtotal 4.

#### *Step 8*

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Give effect to subsections (8) and (9) of section 86 of the Finance Act 1989 (fraction of adjusted amount of acquisition expenses for earlier accounting periods) by adding together—

- (a) Subtotal 4, and
- (b) any amounts which are to be relieved under this section by virtue of those subsections,

to give the basic deduction.

*Step 9*

If—

- (a) amount D1 (see subsection (10) below), exceeds
- (b) amount R (see subsection (11) below),

deduct an amount equal to the excess from the basic deduction.

*Step 10: the amount of the expenses deduction*

The amount of the expenses deduction is so much of the basic deduction (see Step 8) as remains after making any deduction required at Step 9.

- (8) For the purposes of Step 1, the expenses that are attributable to basic life assurance and general annuity business are the expenses which are attributable to that business in accordance with proper internal accounting practice.

In this subsection “proper internal accounting practice” means the practice of insurance companies in allocating all the expenses of the company to particular categories of business in accordance with any applicable requirements of—

- (a) generally accepted accounting practice, or
- (b) the Prudential Sourcebook (Insurers).

- (9) The following rules have effect for determining for the purposes of Step 1 the expenses that are referable to an accounting period.

*Rule A*

Where a period of account coincides with an accounting period, the expenses brought into account for the period of account are the expenses referable to the accounting period.

*Rule B*

Where—

- (a) two or more accounting periods fall within the same period of account, and
- (b) that period of account is longer than 12 months,

section 834(4) (apportionment on time basis) is to apply.

*Rule C*

In any other case where two or more accounting periods fall within the same period of account, the expenses referable to any of those accounting periods are the expenses that would have been referable to that accounting period if—

- (a) the accounting period had coincided with a period of account, and
- (b) a separate periodical return had been made for that period of account,

and section 834(4) (apportionment on time basis) is not to apply.

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### Rule D

Rules A to C are subject to any provision of the Corporation Tax Acts which provides for an amount to be treated as expenses payable for, or referable to, a particular period.

- (10) The amount D1 in Step 9 is the amount that would be the profits of the company's life assurance business for the accounting period if—
- (a) computed in accordance with the provisions applicable to Case I of Schedule D, and
  - (b) adjusted in respect of losses.

The adjustment in respect of losses is a deduction of the amount which, disregarding sections 434A(2) and 440B, would fall to be set off under section 393 against the company's income for that period if the company had always been charged to tax under Case I of Schedule D in respect of its life assurance business.

- (11) The amount R in Step 9 (which may be a negative amount) is found for the accounting period by—
- (a) taking the company's relevant income, and
  - (b) deducting from it the relevant aggregate.

The "relevant income" is the sum of—

- (a) the income and gains referable by virtue of section 432A to the company's basic life assurance and general annuity business;
- (b) distributions received by the company from companies resident in the United Kingdom which are referable by virtue of section 432A to its basic life assurance and general annuity business;
- (c) profits chargeable under Case VI of Schedule D under section 436, 439B or 441.

The "relevant aggregate" is the sum of—

- (a) the basic deduction (see Step 8);
- (b) any non-trading deficit on the company's loan relationships which is produced for the period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2 of Schedule 11 to the Finance Act 1996;
- (c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for that period.

- (12) Where for any accounting period—
- (a) the amount of the expenses deduction (see Step 10), exceeds
  - (b) the amount from which that deduction is to be made (see subsection (2) above),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

- (13) Subject to paragraph 4(11) to (13) of Schedule 11 to the Finance Act 1996, where for any accounting period—

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- (a) the basic deduction (see Step 8), exceeds
- (b) the expenses deduction (see Step 10),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(14) In this section any reference to—

- (a) life assurance business, or
- (b) basic life assurance and general annuity business,

includes a reference to capital redemption business.

(15) In this section—

“capital redemption business” means any capital redemption business, within the meaning of section 458, which is business to which that section applies;

“expenses payable” has the meaning given by subsection (3) above; and other expressions have the same meaning as in Chapter 1 of Part 12.”.

(2) This section has effect in accordance with sections 42 and 44 (commencement and transitional provisions).

#### **41 Related amendments to other enactments**

- (1) The enactments mentioned in Schedule 6 to this Act shall have effect with the amendments specified in that Schedule.
- (2) Subsection (1) has effect in accordance with sections 42, 43 and 44 (commencement and transitional provisions).

#### **42 Commencement of sections 38 to 41**

- (1) The amendments made by sections 38 to 41 and Schedule 6 have effect for accounting periods beginning on or after 1st April 2004.
- (2) This is subject to the transitional provisions in sections 43 and 44 and that Schedule.

#### **43 Companies with investment business: transitional provisions**

- (1) Any amount which, apart from this subsection, would have fallen to be treated under the old section 75(3) as if it had been disbursed as expenses of management for the first new accounting period of a company shall instead be treated as if it were expenses of management deductible for that period by virtue of the new section 75(9).
- (2) To the extent that any amount was deductible under subsection (1) of section 75 for an old accounting period, the amount shall not again be deductible under that subsection for a new accounting period.
- (3) Subsection (2) is without prejudice to the old section 75(3) and the new section 75(9) (carry forward of unrelieved excess to later accounting period).
- (4) To the extent that an amount—
  - (a) was not deductible under section 75(1) by an investment company for any old accounting period, but



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- (b) would have been deductible under the new section 75(1) for an old accounting period if the amendments made by sections 38 and 39 and Schedule 6 or any order under section 46 (so far as having effect in relation to the first new accounting period) had been in force in relation to that period,  
the amount shall be deductible under section 75(1) for the first new accounting period of the company.
- (5) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 (“the commencement date”), it shall be assumed, for the purpose of determining the amounts that are deductible for that period under section 75(1) of the Taxes Act 1988, that that accounting period (the “straddling period”) consists of two separate accounting periods—
- (a) the first beginning with the straddling period and ending with the day preceding the commencement date, and
  - (b) the second beginning with the commencement date and ending with the straddling period,
- but this is subject to subsection (6).
- (6) In the case of an investment company, subsection (5) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 75(1) by virtue of—
- (a) subsection (3) of the old section 75, or
  - (b) any provision of the Corporation Tax Acts, apart from section 75 and this section.
- (7) Where, for the purposes of section 768B or 768C of the Taxes Act 1988, there is a change in the ownership of a company during the straddling period, then for the purposes of the section in question (and Schedule 28A to that Act), before making any such division as is required by section 768B(4) or 768C(3) of that Act,—
- (a) the straddling period shall be divided into two parts in accordance with subsection (5), and
  - (b) those parts shall be treated in accordance with that subsection as two separate accounting periods, but
  - (c) subsection (6) shall be disregarded,
- and section 768B or 768C of, and Schedule 28A to, the Taxes Act 1988 shall have effect accordingly.
- (8) In this section—
- “the commencement date” shall be construed in accordance with subsection (5);
  - “investment company” has the same meaning as in Part 4 of the Taxes Act 1988 (see section 130 of that Act);
  - “new accounting period” means an accounting period beginning on or after the commencement date;
  - “old accounting period” means an accounting period beginning before the commencement date;
  - “the new section 75” means section 75 as it has effect in relation to a new accounting period;
  - “the old section 75” means section 75 as it has effect (apart from subsection (5) above) in relation to an old accounting period;
  - “section 75” means section 75 of the Taxes Act 1988.

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#### **44 Insurance companies: transitional provisions**

- (1) Step 7 has effect for the first new accounting period as if, in paragraph (b) of that Step, the reference to amounts carried forward under subsection (12) or (13) of the new section 76 (carry forward of unrelieved excess to later accounting period) included—
  - (a) a reference to amounts falling to be carried forward from the last old accounting period under section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)), and
  - (b) a reference to so much of any pool under subsection (6) of section 87 of the Finance Act 1989 (c. 26) (pre-1990 expenses) as remains after making any reduction required by paragraph (c) of that subsection for the last old accounting period.
  
- (2) To the extent that an amount—
  - (a) was not deductible under the old section 76(1) by a company for any old accounting period, but
  - (b) would have fallen to be taken into account by the company in determining the expenses deduction to be made under the new section 76(1) for an old accounting period if the amendments made by section 40 and Schedule 6 had been in force in relation to that period,
 the company's basic deduction (see Step 8) for the first new accounting period shall be increased by the addition of that amount.
  
- (3) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 (“the commencement date”), it shall be assumed, for the purpose of determining the deduction to be made under section 76(1), that that accounting period (“the straddling period”) consists of two separate accounting periods—
  - (a) the first beginning with the straddling period and ending with the day preceding the commencement date (“the first notional period”), and
  - (b) the second beginning with the commencement date and ending with the straddling period (“the second notional period”),
 and the deduction shall be determined in accordance with subsections (4) to (6).
  
- (4) For the purpose of determining the deduction to be made under section 76(1) for the straddling period—
  - (a) first add together—
    - (i) such amounts falling within the old section 76(1) as were disbursed for the first notional period, but without deducting amounts falling within the old section 76(1)(aa), (a), (c), or (ca),
    - (ii) the amounts falling to be brought into account at Step 1, as reduced at Step 2, for the second notional period, and
    - (iii) amounts falling to be carried forward from the previous accounting period under the old section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)),
  - (b) then reduce the aggregate of those amounts (but not below nil), by deducting from that aggregate any amounts falling within the old section 76(1)(aa), (a), (c), or (ca) for the straddling period,
 and that aggregate, as so reduced, is deductible in accordance with the old section 76(1) (e) but subject to the old section 76(2) to (2D).

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- (5) Subsection (3) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 76(1) by virtue of any provision of the Corporation Tax Acts apart from—
- (a) the old section 75(3),
  - (b) section 76, and
  - (c) this section,
- (so that, in particular, the old section 86 has effect for the straddling period).
- (6) No amount shall be brought into account in determining the deduction to be made under section 76(1) for the straddling period except as provided by subsections (4) and (5).
- (7) Any reference in this section to a numbered Step is a reference to the Step so numbered in subsection (7) of the new section 76.
- (8) In this section—
- “the commencement date” shall be construed in accordance with subsection (3);
  - “new accounting period” means an accounting period beginning on or after the commencement date;
  - “old accounting period” means an accounting period beginning before the commencement date;
  - “the new section 76” means section 76 as it has effect in relation to a new accounting period;
  - “the old section 76” means section 76 as it has effect (apart from subsection (3) above) in relation to an old accounting period;
  - “section 75” means section 75 of the Taxes Act 1988;
  - “section 76” means section 76 of the Taxes Act 1988;
  - “the old section 86” means section 86 of the Finance Act 1989 (c. 26) as it has effect (apart from subsection (3) above) in relation to an old accounting period.

*Amounts reversing expenses of management deducted*

**45 Amounts reversing expenses of management deducted: charge to tax**

- (1) After section 75A of the Taxes Act 1988 (inserted by section 39) insert—

**“75B Amounts reversing expenses of management deducted: charge to tax**

- (1) This section applies in any case where the following conditions are satisfied—
- (a) a credit is brought into account by a company in a period of account (the “reversal period”) which ends on or after the commencement date,
  - (b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),
  - (c) the debit (in whole or in part) represents expenses of management deductible under section 75(1) for an accounting period of the company (“the period of deductibility”),

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- (d) the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),
  - (e) the period of deductibility ends before, or at the same time as, the reversal period,
  - (f) the reversal period does not coincide with an accounting period beginning before the commencement date.
- (2) In any such case, subsection (4) or (5) below (as the case may be) shall apply in relation to the reversal amount.
- (3) In this section “the reversal amount” means so much of the credit as—
- (a) reverses so much of the debit as represents the expenses of management, and
  - (b) does not represent sums otherwise taken into account in determining for the purposes of corporation tax the profits and losses of the company for the relevant accounting period or any earlier accounting period.
- For this purpose the relevant accounting period is the latest accounting period of the company that falls wholly or partly within the reversal period.
- (4) If the reversal period coincides with an accounting period of the company beginning on or after the commencement date, the reversal amount shall be dealt with for that period in accordance with subsection (7) below.
- (5) If the reversal period does not coincide with an accounting period of the company—
- (a) the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and
  - (b) any amount so apportioned to an accounting period beginning on or after the commencement date shall be dealt with for that period in accordance with subsection (7) below.
- (6) An apportionment under subsection (5) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.
- (7) Where an amount falls to be dealt with in accordance with this subsection for an accounting period—
- (a) it shall, so far as possible, be applied in reducing or further reducing (but not below nil) the company’s expenses of management deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess), and
  - (b) so much of the amount as cannot be so applied shall be regarded as income of the company chargeable under Case VI of Schedule D for that accounting period.
- (8) In subsection (1) above “brought into account”, in relation to a period of account of a company, means brought into account in accordance with generally accepted accounting practice in determining, for accounting purposes, profit and loss for that period of account.

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- (9) If (apart from this subsection) an accounting period does not coincide with, or fall within, any period of account, it shall be assumed for the purposes of this section that there is a period of account of the company that coincides with that accounting period.
- (10) It shall be assumed for the purposes of this section that, in determining for accounting purposes profit and loss for any period of account of any company, amounts fall to be brought into account in accordance with generally accepted accounting practice.
- (11) For the purposes of this section a credit reverses a debit in whole or in part in any case where the sum represented in whole or in part by the debit is paid and then in whole or in part repaid (as well as in a case where the sum represented by the debit is never paid).
- (12) In this section—  
“the commencement date” means 1st April 2004;  
“credit” means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account;  
“debit” means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.”
- (2) Where any such previous period as is referred to in subsection (1)(d) of section 75B is an old accounting period, that section has effect so far as relating to that previous period as if the reference to section 75(9) were a reference to subsection (3) of the old section 75.
- (3) In subsection (2), “old accounting period” and “the old section 75” have the same meaning as in section 43.
- (4) In section 842 of the Taxes Act 1988 (investment trusts) after subsection (1AB) insert—  
“(1AC) In determining the amount of a company’s income for the purposes of subsection (1)(a) above, no account shall be taken of any amount that falls under section 75B(7)(b) to be regarded as income of the company chargeable under Case VI of Schedule D.”

#### *Power to make consequential amendments*

### **46 Power to make consequential amendments**

- (1) The Treasury may by order make such amendments, repeals or revocations in any enactment (including an enactment amended by this Act) as appear to them to be appropriate in consequence of sections 38 to 40 and 45 and Schedule 6.
- (2) The power conferred by subsection (1) to make an order includes power—  
(a) to make different provision for different cases, and  
(b) to make incidental, consequential, supplemental or transitional provision and savings.
- (3) Any order made under this section on or before 31st December 2004 may make provision having effect in relation to accounting periods ending before the date on which the order is made (but not before 1st April 2004).

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(4) In this section—

“enactment” includes an enactment comprised in subordinate legislation;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (see section 21 of that Act).

*Insurance companies: miscellaneous*

**47 Insurance companies etc.**

Schedule 7 to this Act (which makes provision about insurance companies and companies which have ceased to be insurance companies after a transfer of business) shall have effect.

*Loan relationships and derivative contracts*

**48 Loan relationships: miscellaneous amendments**

Schedule 8 to this Act (which makes amendments relating to loan relationships) shall have effect.

**49 Derivative contracts: miscellaneous amendments**

Schedule 9 to this Act (which makes amendments relating to derivative contracts) shall have effect.

*Accounting practice*

**50 Generally accepted accounting practice**

(1) In the Tax Acts “generally accepted accounting practice” means—

- (a) in relation to the affairs of a company or other entity that prepares accounts in accordance with international accounting standards (“IAS accounts”), generally accepted accounting practice with respect to such accounts;
- (b) in any other case, UK generally accepted accounting practice.

(2) In the Tax Acts “international accounting standards” means the international accounting standards, within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation.

(3) Where the European Commission has not adopted a particular international accounting standard, then as regards the matters covered by that standard—

- (a) generally accepted accounting practice with respect to IAS accounts shall be regarded as permitting the use either of the unadopted standard or of UK generally accepted accounting practice, and
- (b) accounts prepared on either basis shall be regarded for the purposes of the Tax Acts as prepared in accordance with international accounting standards.

(4) In the Tax Acts “UK generally accepted accounting practice”—

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- (a) means generally accepted accounting practice with respect to accounts of UK companies (other than IAS accounts) that are intended to give a true and fair view, and
- (b) has the same meaning in relation to—
  - (i) individuals,
  - (ii) entities other than companies, and
  - (iii) companies that are not UK companies,
 as it has in relation to UK companies.

In this subsection “UK companies” means companies incorporated or formed under the law of a part of the United Kingdom.

- (5) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts)—
  - (a) in the definition of “generally accepted accounting practice” for “has the meaning given by section 836A” substitute “ has the meaning given by section 50(1) of the Finance Act 2004 ”;
  - (b) at the appropriate place insert—
    - ““international accounting standards” has the meaning given by section 50(2) of the Finance Act 2004;”;
    - and
    - ““UK generally accepted accounting practice” has the meaning given by section 50(4) of the Finance Act 2004;”.
- (6) This section has effect in relation to—
  - (a) periods of account beginning on or after 1st January 2005, and
  - (b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

## **51 Use of different accounting practices within a group of companies**

- (1) This section applies where—
  - (a) a company (company A) prepares accounts in accordance with international accounting standards,
  - (b) another company (company B) in the same group of companies prepares accounts in accordance with UK generally accepted accounting practice,
  - (c) there is a transaction between, or a series of transactions involving, company A and company B, and
  - (d) a tax advantage would (apart from this section) be obtained by either or both of those companies in relation to the transaction or series of transactions as a result of the use of different accounting practices.
- (2) In that case the Tax Acts apply in relation to that transaction or series of transactions as if both companies prepared accounts in accordance with UK generally accepted accounting practice.
- (3) The provisions of section 170(3) to (6) of the Taxation of Chargeable Gains Act 1992 (c. 12) apply to determine for the purposes of this section whether companies are in the same group of companies.

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- (4) A series of transactions is not prevented from being a series of transactions involving company A and company B by reason only of the fact that one or more of the following is the case—
- (a) there is no transaction in the series to which both those companies are parties;
  - (b) that parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those companies;
  - (c) there are one or more transactions in the series to which neither of those companies is a party.
- (5) In this section “tax advantage” has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (see section 709 of that Act).
- (6) This section has effect in relation to—
- (a) periods of account beginning on or after 1st January 2005, and
  - (b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

## **52 Amendment of enactments that operate by reference to accounting practice**

- (1) Schedule 10 makes amendments of provisions of the Tax Acts that operate by reference to accounting practice.
- (2) In that Schedule—
- Part 1 makes amendments relating to loan relationships;
  - Part 2 makes amendments relating to derivative contracts;
  - Part 3 makes amendments relating to intangible fixed assets;
  - Part 4 makes amendments relating to foreign currency accounting.
- (3) The amendments have effect in relation to—
- (a) periods of account beginning on or after 1st January 2005, and
  - (b) in the case of a company required to prepare accounts under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

## **53 Treatment of expenditure on research and development**

- (1) Expenditure by a company on research and development, if not of a capital nature, is not prevented from being regarded for tax purposes as deductible in computing profits by reason of the fact that for accounting purposes it is brought into account by the company in determining the value of an intangible asset.
- (2) Subsection (1) applies, in particular, for the purposes of—
- section 82A of the Taxes Act 1988 (deduction of expenditure on research and development),
  - Schedule 20 to the Finance Act 2000 (c. 17) (R&D tax relief),



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Schedule 12 to the Finance Act 2002 (c. 23) (tax relief for expenditure on research and development), and

Schedule 13 to that Act (tax relief for expenditure on vaccine research etc.).

- (3) Where expenditure is brought into account by a company for tax purposes in accordance with subsection (1), no deduction may be made in computing for tax purposes the profits of the company in respect of the writing down of so much of the value of an intangible asset as is attributable to that expenditure.
- (4) Expenditure shall not be regarded by virtue of subsection (1) as deductible in computing a company's profits for an accounting period to the extent that—
- (a) a deduction has been made in respect of it in computing the company's profits for a previous accounting period, or
  - (b) the company has benefited from a tax relief in respect of it for a previous accounting period under any of the provisions specified in subsection (2).
- (5) In this section—
- “intangible asset” has the meaning it has for accounting purposes; and
  - “research and development” has the meaning given by section 837A of the Taxes Act 1988.
- (6) This section shall come into force in accordance with provision made by the Treasury by order made by statutory instrument.

#### Commencement Information

- I8** S. 53 in force at 1.1.2005 with effect as specified in art. 2 of the commencing S.I. by [S.I. 2004/3268](#), [art. 2](#)

## 54 Trading profits etc. from securities: taxation of amounts taken to reserves

- (1) Before section 473 of the Taxes Act 1988 insert—

### “472A Trading profits etc. from securities: taxation of amounts taken to reserves

- (1) This section applies in relation to securities—
- (a) which are held by a person carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities; and
  - (b) which are such that a profit on their sale would form part of the trading profits of that business.
- (2) Profits and losses arising from such securities that in accordance with generally accepted accounting practice are—
- (a) calculated by reference to the fair value of the securities, and
  - (b) recognised in that person's statement of recognised gains and losses or statement of changes in equity,
- shall be brought into account in computing the profits or losses of a business in accordance with the provisions of this Act applicable to Case I of Schedule D.
- (3) Subsection (2) does not apply—

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- (a) to an amount to the extent that it derives from or otherwise relates to an amount brought into account under that subsection in an earlier period of account, or
  - (b) to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this section, “securities”—
- (a) includes shares and any rights, interests or options that by virtue of section 99, 135(5) or 136(5) of the Taxation of Chargeable Gains Act 1992 are treated as shares for the purposes of sections 126 to 136 of that Act; but
  - (b) does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996).”.
- (2) This section has effect in relation to—
- (a) periods of account beginning on or after 1st January 2005, and
  - (b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

#### *Miscellaneous*

### **55 Duty of company to give notice of coming within charge to corporation tax**

- (1) A company must give notice to the Board—
- (a) of the beginning of its first accounting period, and
  - (b) of the beginning of any subsequent accounting period that does not immediately follow the end of a previous accounting period.
- (2) The notice required by this section—
- (a) must be in writing;
  - (b) must state when the accounting period began;
  - (c) must contain such other information as may be prescribed;
  - (d) may be given to any officer of the Board; and
  - (e) must be given not later than three months after the beginning of the accounting period.
- (3) “Prescribed” in subsection (2)(c) means prescribed by regulations made by the Board.
- (4) A company that has a reasonable excuse for failing to give notice as required by this section—
- (a) is not to be regarded as having failed to comply with this section until the excuse ceases, and
  - (b) after the excuse ceases is not to be regarded as having failed to comply with this section if the required notice is given without unreasonable delay after the excuse ceases.
- (5) In this section—

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- (a) “accounting period” means an accounting period for the purposes of corporation tax;
  - (b) “company” means a body corporate and does not include an unincorporated association or a partnership; and
  - (c) “the Board” means the Commissioners of Inland Revenue.
- (6) In the second column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), at the appropriate place insert— “section 55 of the Finance Act 2004 ”.
- (7) This section applies in relation to accounting periods beginning on or after the day on which this Act is passed.

## 56 Relief for community amateur sports clubs

- (1) Schedule 18 to the Finance Act 2002 (c. 23) (relief for community amateur sports clubs) is amended as follows.
- (2) In paragraph 4(1)(b) (exemption for trading income not exceeding £15,000 etc) for “£15,000” substitute “ £30,000 ”.
- (3) In paragraph 6(1)(b) (exemption for property income not exceeding £10,000 etc) for “£10,000” substitute “ £20,000 ”.
- (4) The amendments made by this section have effect in relation to accounting periods ending on or after 1st April 2004.
- (5) Where an accounting period begins before, and ends on or after, 1st April 2004, the amendments made by subsections (2) and (3) have effect as if—
- (a) the part falling before that date and the part falling on or after it were two separate accounting periods, and
  - (b) the club’s trading income and property income for each of those parts were the proportionally reduced amount of its trading income and property income for the actual accounting period.
- (6) In this section—
- “property income” has the same meaning as in paragraph 6 of Schedule 18 to the Finance Act 2002;
  - “trading income” has the same meaning as in paragraph 4 of that Schedule.

## CHAPTER 3

### CONSTRUCTION INDUSTRY SCHEME

#### *Introduction*

## 57 Introduction

- (1) This Chapter provides for certain payments (see section 60) under construction contracts to be made under deduction of sums on account of tax (see sections 61 and 62).

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- (2) In this Chapter “construction contract” means a contract relating to construction operations (see section 74) which is not a contract of employment but where—
- (a) one party to the contract is a sub-contractor (see section 58); and
  - (b) another party to the contract (“the contractor”) either—
    - (i) is a sub-contractor under another such contract relating to all or any of the construction operations, or
    - (ii) is a person to whom section 59 applies.
- (3) In sections 60 and 61 “the contractor” has the meaning given by this section.
- (4) In this Chapter—
- (a) references to registration for gross payment are to registration under section 63(2),
  - (b) references to registration for payment under deduction are to registration under section 63(3), and
  - (c) references to registration under section 63 are to registration for gross payment or registration for payment under deduction.
- (5) To the extent that any provision of this Chapter would not, apart from this subsection, form part of the Tax Acts, it shall be taken to form part of those Acts.

## 58 Sub-contractors

For the purposes of this Chapter a party to a contract relating to construction operations is a sub-contractor if, under the contract—

- (a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or
- (b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.

## 59 Contractors

- (1) This section applies to the following bodies or persons—
- (a) any person carrying on a business which includes construction operations;
  - (b) any public office or department of the Crown (including any Northern Ireland department and any part of the Scottish Administration);
  - (c) the Corporate Officer of the House of Lords, the Corporate Officer of the House of Commons and the Scottish Parliamentary Corporate Body;
  - (d) any local authority;
  - (e) any development corporation or new town commission;
  - (f) the Commission for the New Towns;
  - (g) the Secretary of State if the contract is made by him under section 89 of the Housing Associations Act 1985 (c. 69);
  - (h) the Housing Corporation, a housing association, a housing trust, Scottish Homes, and the Northern Ireland Housing Executive;
  - (i) any NHS trust;

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- (j) any HSS trust;
  - (k) any such body or person, being a body or person (in addition to those falling within paragraphs (b) to (j)) which has been established for the purpose of carrying out functions conferred on it by or under any enactment, as may be designated as a body or person to which this section applies in regulations made by the Board of Inland Revenue;
  - (l) a person carrying on a business at any time if—
    - (i) his average annual expenditure on construction operations in the period of three years ending with the end of the last period of account before that time exceeds £1,000,000, or
    - (ii) where he was not carrying on the business at the beginning of that period of three years, one-third of his total expenditure on construction operations for the part of that period during which he has been carrying on the business exceeds £1,000,000.
- (2) But this section only applies to a body or person falling within subsection (1)(b) to (f) or (h) to (k) if—
- (a) in any period of three years, that body or person has had an average annual expenditure on construction operations of more than £1,000,000, and
  - (b) since the condition in paragraph (a) was last satisfied, there have not been three successive years in each of which the body or person has had expenditure on construction operations of less than £1,000,000.

In this subsection “year” means a year ending with 31st March.

- (3) Where section 57(2)(b) begins to apply to a person in any period of account by virtue of his falling within subsection (1)(l), it shall continue to apply to him until he satisfies the Board of Inland Revenue that his expenditure on construction operations has been less than £1,000,000 in each of three successive years beginning in or after that period of account.
- (4) Where the whole or part of a trade is transferred by a company (“the transferor”) to another company (“the transferee”) and section 343 of the Taxes Act 1988 has effect in relation to the transfer, then in determining for the purposes of this section the amount of expenditure incurred by the transferee—
- (a) the whole or, as the case may be, a proportionate part of any expenditure incurred by the transferor at a time before the transfer is to be treated as if it had been incurred at that time by the transferee; and
  - (b) where only a part of the trade is transferred, the expenditure is to be apportioned in such manner as appears to the Board of Inland Revenue, or on appeal to the Commissioners, to be just and reasonable.
- (5) In this section—
- “development corporation” has the same meaning as in—
    - (a) the New Towns Act 1981 (c. 64), or
    - (b) the New Towns (Scotland) Act 1968 (c. 16);
  - “enactment” includes an enactment comprised in an Act of the Scottish Parliament and a provision comprised in Northern Ireland legislation;
  - “housing association” has the same meaning as in—
    - (a) the Housing Associations Act 1985 (c. 69), or
    - (b) Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/ 1725 (N.I. 15));

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“housing trust” has the same meaning as in the Housing Associations Act 1985;

“HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

“new town commission” has the same meaning as in the New Towns Act (Northern Ireland) 1965 (c. 13 (N.I.));

“NHS trust” means a National Health Service trust—

- (a) established under Part 1 of the National Health Service and Community Care Act 1990 (c. 19), or
- (b) constituted under section 12A of the National Health Service (Scotland) Act 1978 (c. 29).

- (6) In this section references to a body or person include references to an office or department.
- (7) The Board of Inland Revenue may make regulations amending this section for the purpose of removing references to bodies which have ceased to exist.

*Deductions on account of tax from contract payments to sub-contractors*

## 60 Contract payments

- (1) In this Chapter “contract payment” means any payment which is made under a construction contract and is so made by the contractor (see section 57(3)) to—
  - (a) the sub-contractor,
  - (b) a person nominated by the sub-contractor or the contractor, or
  - (c) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.
- (2) But a payment made under a construction contract is not a contract payment if any of the following exceptions applies in relation to it.
- (3) This exception applies if the payment is treated as earnings from an employment by virtue of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (agency workers).
- (4) This exception applies if the person to whom the payment is made or, in the case of a payment made to a nominee, each of the following persons—
  - (a) the nominee,
  - (b) the person who nominated him, and
  - (c) the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made,
 is registered for gross payment when the payment is made.
 

But this is subject to subsections (5) and (6).
- (5) Where a person is registered for gross payment as a partner in a firm (see section 64), subsection (4) applies only in relation to payments made under contracts under which—
  - (a) the firm is a sub-contractor, or

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- (b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.
- (6) Where a person is registered for gross payment otherwise than as a partner in a firm but he is or becomes a partner in a firm, subsection (4) does not apply in relation to payments made under contracts under which—
- (a) the firm is a sub-contractor, or
  - (b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.
- (7) This exception applies if such conditions as may be prescribed in regulations made by the Board of Inland Revenue for the purposes of this subsection are satisfied; and those conditions may relate to any one or more of the following—
- (a) the payment,
  - (b) the person making it, and
  - (c) the person receiving it.
- (8) For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations is to be taken to be made under the contract; and if—
- (a) the obligation is to make a payment to a person (“A”) within paragraph (a) to (c) of subsection (1), but
  - (b) the payment discharging that obligation is made to a person (“B”) not within those paragraphs,
- the payment is for those purposes to be taken to be made to A.

## **61 Deductions on account of tax from contract payments**

- (1) On making a contract payment the contractor (see section 57(3)) must deduct from it a sum equal to the relevant percentage of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates.
- (2) In subsection (1) “the relevant percentage” means such percentage as the Treasury may by order determine.
- (3) That percentage must not exceed—
- (a) if the person for whose labour (or for whose employees' or officers' labour) the payment in question is made is registered for payment under deduction, the percentage which is the basic rate for the year of assessment in which the payment is made, or
  - (b) if that person is not so registered, the percentage which is the higher rate for that year of assessment.

## **62 Treatment of sums deducted**

- (1) A sum deducted under section 61 from a payment made by a contractor—
- (a) must be paid to the Board of Inland Revenue, and
  - (b) is to be treated for the purposes of income tax or, as the case may be, corporation tax as not diminishing the amount of the payment.

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- (2) If the sub-contractor is not a company a sum deducted under section 61 and paid to the Board is to be treated as being income tax paid in respect of the sub-contractor's relevant profits.

If the sum is more than sufficient to discharge his liability to income tax in respect of those profits, so much of the excess as is required to discharge any liability of his for Class 4 contributions is to be treated as being Class 4 contributions paid in respect of those profits.

- (3) If the sub-contractor is a company—
- (a) a sum deducted under section 61 and paid to the Board is to be treated, in accordance with regulations, as paid on account of any relevant liabilities of the sub-contractor;
  - (b) regulations must provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;
  - (c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and
  - (d) regulations must provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraphs (b) and (c).
- (4) For the purposes of subsection (3) the “relevant liabilities” of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to the Inland Revenue in pursuance of an obligation as an employer or contractor.
- (5) In this section—
- (a) “the sub-contractor” means the person for whose labour (or for whose employees' or officers' labour) the payment is made;
  - (b) references to the sub-contractor's “relevant profits” are to the profits from the trade, profession or vocation carried on by him in the course of which the payment was received;
  - (c) “Class 4 contributions” means Class 4 contributions within the meaning of the Social Security Contributions and Benefits Act 1992 (c. 4) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (6) References in this section to regulations are to regulations made by the Board of Inland Revenue.
- (7) Regulations under this section may contain such supplementary, incidental or consequential provision as appears to the Board to be appropriate.

#### *Registration of sub-contractors*

### **63 Registration for gross payment or for payment under deduction**

- (1) If the Board of Inland Revenue are satisfied, on the application of an individual or a company, that the applicant has provided—
- (a) such documents, records and information as may be required by or in accordance with regulations made by the Board, and



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- (b) such additional documents, records and information as may be required by the Inland Revenue in connection with the application,  
the Board must register the individual or company under this section.
- (2) If the Board are satisfied that the requirements of subsection (2), (3) or (4) of section 64 are met, the Board must register—
  - (a) the individual or company, or
  - (b) in a case falling within subsection (3) of that section, the individual or company as a partner in the firm in question,  
for gross payment.
- (3) In any other case, the Board must register the individual or company for payment under deduction.

#### **64 Requirements for registration for gross payment**

- (1) This section sets out the requirements (in addition to that in subsection (1) of section 63) for an applicant to be registered for gross payment.
- (2) Where the application is for the registration for gross payment of an individual (otherwise than as a partner in a firm), he must satisfy the conditions in Part 1 of Schedule 11 to this Act.
- (3) Where the application is for the registration for gross payment of an individual or a company as a partner in a firm—
  - (a) the applicant must satisfy the conditions in Part 1 of Schedule 11 to this Act (if an individual) or Part 3 of that Schedule (if a company), and
  - (b) in either case, the firm itself must satisfy the conditions in Part 2 of that Schedule.
- (4) Where the application is for the registration for gross payment of a company (otherwise than as a partner in a firm)—
  - (a) the company must satisfy the conditions in Part 3 of Schedule 11 to this Act, and
  - (b) if the Board of Inland Revenue have given a direction under subsection (5), each of the persons to whom any of the conditions in Part 1 of that Schedule applies in accordance with the direction must satisfy the conditions which so apply to him.
- (5) Where the applicant is a company, the Board may direct that the conditions in Part 1 of Schedule 11 to this Act or such of them as are specified in the direction shall apply to—
  - (a) the directors of the company,
  - (b) if the company is a close company, the persons who are the beneficial owners of shares in the company, or
  - (c) such of those directors or persons as are so specified,  
as if each of them were an applicant for registration for gross payment.
- (6) See also section 65(1) (power of Board to make direction under subsection (5) on change in control of company applying for registration etc).
- (7) In subsection (5) “director” has the meaning given by section 67 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

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## **65 Change in control of company registered for gross payment**

- (1) Where it appears to the Board of Inland Revenue that there has been a change in the control of a company—
  - (a) registered for gross payment, or
  - (b) applying to be so registered,
 the Board may make a direction under section 64(5).
- (2) The Board may make regulations requiring the furnishing of information with respect to changes in the control of a company—
  - (a) registered for gross payment, or
  - (b) applying to be so registered.
- (3) Section 840 of the Taxes Act 1988 (control) applies for the purposes of this section.

## **66 Cancellation of registration for gross payment**

- (1) The Board of Inland Revenue may at any time make a determination cancelling a person's registration for gross payment if it appears to them that—
  - (a) if an application to register the person for gross payment were to be made at that time, the Board would refuse so to register him,
  - (b) he has made an incorrect return or provided incorrect information (whether as a contractor or as a sub-contractor) under any provision of this Chapter or of regulations made under it, or
  - (c) he has failed to comply (whether as a contractor or as a sub-contractor) with any such provision.
- (2) Where the Board make a determination under subsection (1), the person's registration for gross payment is cancelled with effect from the end of a prescribed period after the making of the determination (but see section 67(5)).
- (3) The Board of Inland Revenue may at any time make a determination cancelling a person's registration for gross payment if they have reasonable grounds to suspect that the person—
  - (a) became registered for gross payment on the basis of information which was false,
  - (b) has fraudulently made an incorrect return or provided incorrect information (whether as a contractor or as a sub-contractor) under any provision of this Chapter or of regulations made under it, or
  - (c) has knowingly failed to comply (whether as a contractor or as a sub-contractor) with any such provision.
- (4) Where the Board make a determination under subsection (3), the person's registration for gross payment is cancelled with immediate effect.
- (5) On making a determination under this section cancelling a person's registration for gross payment, the Board must without delay give the person notice stating the reasons for the cancellation.
- (6) Where a person's registration for gross payment is cancelled by virtue of a determination under subsection (1), the person must be registered for payment under deduction.

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- (7) Where a person's registration for gross payment is cancelled by virtue of a determination under subsection (3), the person may, if the Board thinks fit, be registered for payment under deduction.
- (8) A person whose registration for gross payment is cancelled under this section may not, within the period of one year after the cancellation takes effect (see subsections (2) and (4) and section 67(5)), apply for registration for gross payment.
- (9) In this section "a prescribed period" means a period prescribed by regulations made by the Board.

## **67 Registration for gross payment: appeals**

- (1) A person aggrieved by—
  - (a) the refusal of an application for registration for gross payment, or
  - (b) the cancellation of his registration for gross payment,may by notice appeal to the General Commissioners or, if the person so elects in the notice, to the Special Commissioners.
- (2) The notice must be given to the Board of Inland Revenue within 30 days after the refusal or cancellation.
- (3) The notice must state the person's reasons for believing that—
  - (a) the application should not have been refused, or
  - (b) his registration for gross payment should not have been cancelled.
- (4) The jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board of Inland Revenue in the exercise of their functions under section 63, 64, 65 or 66.
- (5) Where a person appeals against the cancellation of his registration for gross payment by virtue of a determination under section 66(1), the cancellation of his registration does not take effect until whichever is the latest of the following—
  - (a) the abandonment of the appeal,
  - (b) the determination of the appeal by the Commissioners, or
  - (c) the determination of the appeal by the appropriate court.
- (6) In this section "the appropriate court" means—
  - (a) in relation to England and Wales, the High Court;
  - (b) in relation to Scotland, the Court of Session, as the Court of Exchequer in Scotland;
  - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland.

## **68 Registration for payment under deduction: cancellation and appeals**

The Board of Inland Revenue may make regulations providing for—

- (a) the cancellation, in such circumstances as may be prescribed by the regulations, of a person's registration for payment under deduction;
- (b) appeals against a refusal to register a person for payment under deduction or the cancellation of such registration.

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### *Verification, returns etc and penalties*

#### **69 Verification etc of registration status of sub-contractors**

- (1) The Board of Inland Revenue may make regulations requiring persons who make payments under contracts relating to construction operations, except in prescribed circumstances, to verify with the Board whether a person to whom they are proposing to make—
  - (a) a contract payment, or
  - (b) a payment which would be a contract payment but for section 60(4),
 is registered for gross payment or for payment under deduction.
- (2) The provision that may be made by regulations under subsection (1) includes provision—
  - (a) for preventing a person from verifying unless such conditions as may be prescribed have been satisfied;
  - (b) as to the period for which the verification remains valid.
- (3) The Board of Inland Revenue may make regulations requiring the Board to notify persons of a prescribed description who make payments under contracts relating to construction operations that—
  - (a) a person registered for gross payment has become registered for payment under deduction or has ceased to be registered under section 63, or
  - (b) a person registered for payment under deduction has become registered for gross payment or has ceased to be registered under section 63.
- (4) The provision that may be made by regulations under subsection (1) or (3) includes provision for a person to be entitled to assume, except in prescribed circumstances, that—
  - (a) a person verified or notified as being registered for gross payment, or
  - (b) a person verified or notified as being registered for payment under deduction, has not subsequently ceased to be so registered.
- (5) In this section “prescribed” means prescribed by regulations under this section.

#### **70 Periodic returns by contractors etc**

- (1) The Board of Inland Revenue may make regulations requiring persons who make payments under construction contracts—
  - (a) to make to the Board, at such times and in respect of such periods as may be prescribed, returns relating to such payments;
  - (b) to keep such records as may be prescribed relating to such payments;
  - (c) to provide such information as may be prescribed, at such times as may be prescribed, to persons to whom such payments are made or to such of those persons as are of a prescribed description.
- (2) The provision that may be made by regulations under subsection (1)(a) includes provision requiring, except in such circumstances as may be prescribed,—
  - (a) the person making a return to declare in the return that none of the contracts to which the return relates is a contract of employment;

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- (b) the person making a return to declare in the return that, in the case of each person to whom a payment to which the return relates is made, he has complied with the requirements of any regulations made under section 69(1) (verification of registration status);
  - (c) returns to contain such other information and to be in such form as may be prescribed;
  - (d) a return to be made where no payments have been made in the period to which the return relates.
- (3) The Board of Inland Revenue may make regulations with respect to—
- (a) the production, copying and removal of, and the making of extracts from, any records kept by virtue of any such requirement as is referred to in subsection (1)(b), and
  - (b) rights of access to, or copies of, any such records which are removed.
- (4) Regulations under this section may make provision—
- (a) for or in connection with enabling a person who makes payments under construction contracts to appoint another person (a “scheme representative”) to act on his behalf in connection with any requirements imposed on him by regulations under this section, and
  - (b) as to the rights, obligations or liabilities of scheme representatives.
- (5) In this section “prescribed” means prescribed by regulations under this section.

## 71 Collection and recovery of sums to be deducted

- (1) The Board of Inland Revenue must make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under section 61.
- (2) The regulations may include any matters with respect to which PAYE regulations may be made.
- (3) Interest required to be paid by the regulations—
- (a) is to be paid without any deduction of income tax, and
  - (b) is not to be taken into account in computing any income, profits or losses for [F1 any corporation tax purpose (but see also sections 54 and 869 of the Income Tax (Trading and Other Income) Act 2005 for corresponding rule for income tax purposes)].

### Textual Amendments

**F1** Words in s. 71(3)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 630](#) (with Sch. 2)

## 72 Penalties

If a person, for the purpose of becoming registered for gross payment or for payment under deduction,—

- (a) makes any statement, or furnishes any document, which he knows to be false in a material particular, or

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- (b) recklessly makes any statement, or furnishes any document, which is false in a material particular,  
 he shall be liable to a penalty not exceeding £3,000.

### *Supplementary*

## **73 Regulations under this Chapter: supplementary**

- (1) The Board of Inland Revenue may by regulations make such other provision for giving effect to this Chapter as they consider necessary or expedient.
- (2) The provision that may be made by regulations under subsection (1) includes provision for or in connection with modifying the application of this Chapter in circumstances where—
  - (a) a person acts as the agent of a contractor or sub-contractor;
  - (b) a person's right to payments under a construction contract is assigned or otherwise transferred to another person.
- (3) Regulations under this Chapter may make different provision for different cases.
- (4) Any power under this Chapter to make regulations authorising or requiring a document (whether or not of a particular description), or any records or information, to be given or requested by or to be sent or produced to the Board of Inland Revenue includes power—
  - (a) to authorise the Board to nominate a person who is not an officer of the Board to be the person who on behalf of the Board—
    - (i) gives or requests the document, records or information; or
    - (ii) is the recipient of the document, records or information; and
  - (b) to require the document, records or information, in cases prescribed by or determined under the regulations, to be sent or produced to the address (determined in accordance with the regulations) of the person nominated by the Board to receive it on their behalf.

## **74 Meaning of “construction operations”**

- (1) In this Chapter “construction operations” means operations of a description specified in subsection (2), not being operations of a description specified in subsection (3); and references to construction operations—
  - (a) except where the context otherwise requires, include references to the work of individuals participating in the carrying out of such operations; and
  - (b) do not include references to operations carried out or to be carried out otherwise than in the United Kingdom (or the territorial sea of the United Kingdom).
- (2) The following operations are, subject to subsection (3), construction operations for the purposes of this Chapter—
  - (a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;
  - (b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (in particular) walls, roadworks,

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- power-lines, electronic communications apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
- (c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;
  - (d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
  - (e) painting or decorating the internal or external surfaces of any building or structure;
  - (f) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.
- (3) The following operations are not construction operations for the purposes of this Chapter—
- (a) drilling for, or extraction of, oil or natural gas;
  - (b) extraction (whether by underground or surface working) of minerals and tunnelling or boring, or construction of underground works, for this purpose;
  - (c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;
  - (d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;
  - (e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;
  - (f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;
  - (g) signwriting and erecting, installing and repairing signboards and advertisements;
  - (h) the installation of seating, blinds and shutters;
  - (i) the installation of security systems, including burglar alarms, closed circuit television and public address systems.
- (4) The Treasury may by order made by statutory instrument amend either or both of subsections (2) and (3) by—
- (a) adding,
  - (b) varying, or
  - (c) removing,
- any description of operations.
- (5) No statutory instrument containing an order under subsection (4) shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

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## **75 Meaning of “the Inland Revenue” etc and delegation of Board’s functions**

- (1) In this Chapter “the Inland Revenue” means any officer of the Board of Inland Revenue.
- (2) In this Chapter “the Board of Inland Revenue” means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)).
- (3) The Board of Inland Revenue may make regulations providing for any of the following to be done on behalf of the Board—
  - (a) the registration of persons under section 63;
  - (b) the giving of directions under section 64(5); and
  - (c) the cancellation under section 66 of a person’s registration for gross payment.

## **76 Consequential amendments**

Schedule 12 to this Act (which makes consequential amendments) has effect.

## **77 Commencement and transitional provision**

- (1) This Chapter has effect in relation to payments made on or after the appointed day under contracts relating to construction operations.
- (2) Where a certificate issued to a person under section 561 of the Taxes Act 1988 is in force immediately before the appointed day, the person is to be treated as if, on the appointed day, the Board of Inland Revenue had registered him for gross payment.
- (3) Where a registration card issued to a person in accordance with regulations made under section 566(2A) of the Taxes Act 1988 is in force immediately before the appointed day, the person is to be treated as if, on the appointed day, the Board of Inland Revenue had registered him for payment under deduction.
- (4) Subsection (5) applies in relation to the first payment (“the relevant payment”) made after the appointed day by a person (“C”) to a sub-contractor (“SC”) under a contract relating to construction operations if—
  - (a) before the appointed day, C had made one or more payments to SC under the contract or another such contract,
  - (b) the last of those payments (“the last payment”) was made in the year of assessment in which the relevant payment was made or in either of the two years of assessment before that,
  - (c) at the time of the last payment—
    - (i) a certificate issued to SC under section 561 of the Taxes Act 1988 was in force, or
    - (ii) a registration card issued to SC in accordance with regulations made under section 566(2A) of that Act was in force, and
  - (d) on making the relevant payment, C has no reason to believe that SC—
    - (i) did not become registered for gross payment or (as the case may be) for payment under deduction by virtue of subsection (2) or (3), and
    - (ii) is not still so registered.



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- (5) Where this subsection applies, regulations under section 69(1) shall not require C, before making the relevant payment, to verify whether SC is registered for gross payment or for payment under deduction.
- (6) Where subsection (5) applies, C shall be entitled to assume, on making any further payments to SC under a contract relating to construction operations, that SC has not subsequently ceased to be so registered, unless notified to the contrary in accordance with regulations made under section 69(3).
- (7) In this section “the appointed day” means such day as the Treasury may by order appoint.
- (8) The Treasury may by order make such further supplemental and transitional provision and savings as they think fit in connection with the coming into effect of this Chapter.

## CHAPTER 4

### PERSONAL TAXATION

#### *Taxable benefits*

#### **78 Childcare and childcare vouchers**

- (1) Schedule 13 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) relating to childcare and childcare vouchers.
- (2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

#### **79 Exemption for loaned computer equipment**

- (1) In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: miscellaneous exemptions), section 320 (limited exemption for computer equipment) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) If conditions A and B are met in respect of the provision of computer equipment—
    - (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
    - (b) liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the aggregate cash equivalent of the benefit in the tax year as exceeds £500.”.
- (3) Omit subsections (4) and (5).
- (4) This section has effect for the year 2004-05 and subsequent years of assessment.

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## 80 Vans

- (1) Schedule 14 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 relating to vans.
- (2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

## 81 Emergency vehicles

- (1) In the Income Tax (Earnings and Pensions) Act 2003, after section 248 insert—

### “248A Emergency vehicles

- (1) This section applies where—
  - (a) an emergency vehicle is made available to a person employed in an emergency service for the person’s private use,
  - (b) the terms on which it is made available prohibit its private use otherwise than when the person is on call or engaged in on-call commuting, and
  - (c) the person does not make private use of it otherwise than in such circumstances.
- (2) No liability to income tax arises by virtue of Chapter 6 or 10 of Part 3 (taxable benefits: cars, vans etc. and residual liability to charge) in respect of the benefit.
- (3) “Emergency vehicle” means a vehicle which is used to respond to emergencies and which either—
  - (a) has fixed to it a lamp designed to emit a flashing light for use in emergencies, or
  - (b) would have such a lamp fixed to it but for the fact that (if it did) a special threat to the personal physical security of those using it would arise by reason of it being apparent that they were employed in an emergency service.
- (4) The following are “employed in an emergency service”—
  - (a) constables and other persons employed for police purposes,
  - (b) persons employed for the purposes of a fire, or fire and rescue, service, and
  - (c) persons employed in the provision of ambulance or paramedic services.
- (5) The Treasury may by order amend subsection (4).
- (6) “Private use”, in relation to a person, means any use other than for the person’s business travel; and “business travel” has the same meaning as in Chapter 6 of Part 3 (see section 171(1)).
- (7) A person to whom an emergency vehicle is made available is on call when liable, as part of normal duties, to be called on to use the emergency vehicle to respond to emergencies.
- (8) A person to whom an emergency vehicle is made available is engaged in on-call commuting when the person—

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- (a) is using it for ordinary commuting or for travel between two places that is for practical purposes substantially ordinary commuting, and
  - (b) is required to do so in order that it is available for use by the person, as part of normal duties, for responding to emergencies.”.
- (2) In section 236(2)(c) of that Act (mileage allowance and passenger payments: meaning of “company vehicle”), after “vans” insert “and section 248A (emergency vehicles)”.
- (3) This section has effect for the year 2004-05 and subsequent years of assessment.

## 82 European travel expenses of MPs and other representatives

- (1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
- (2) In section 294 (EU travel expenses of MPs and other representatives) in subsection (1) (exemption from income tax in respect of sums paid to Members of the House of Commons and other representatives in respect of EU travel expenses) for “EU” (in both places) substitute “European”.
- (3) In that section, for subsections (2) to (4) substitute—
- “(2) “European travel expenses” means the cost of, and any additional expenses incurred in, travelling between the United Kingdom and a relevant European location.
  - (3) “Relevant European location” means—
    - (a) a European Union institution or agency, or
    - (b) the national parliament of—
      - (i) another member State,
      - (ii) a candidate or applicant country, or
      - (iii) a member State of the European Free Trade Association.
  - (4) The Treasury may by order amend subsection (3) by—
    - (a) adding a European location,
    - (b) removing a European location, or
    - (c) varying the description of a European location.”.
- (4) In the heading of that section, “EU” accordingly becomes “European”.
- (5) This section has effect in relation to sums paid in respect of costs or expenses incurred on or after 6th April 2004.

### *Gift aid*

## 83 Giving through the self-assessment return

- (1) This section applies where—
- (a) as a result of the making by an individual of a personal return for a year of assessment, a tax repayment in respect of one or more years of assessment falls to be made to him,
  - (b) the personal return contains a single direction, in the form specified in the return, requiring—
    - (i) the whole of the tax repayment, or

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- (ii) so much of the tax repayment as does not exceed a specified amount, to be paid on his behalf as a gift to a single specified charity,
  - (c) the direction also requires the gift to be treated as a qualifying donation for the purposes of section 25 of the Finance Act 1990 (c. 29) (gift aid), and
  - (d) the gift satisfies the requirements of subsection (2) of that section.
- (2) The gift is to be treated as a qualifying donation for the purposes of that section made by the individual at the time the payment is received by the charity.
- (3) Section 98 of the Finance Act 2002 (c. 23) (gift aid: election to be treated as if gift made in previous tax year) accordingly does not apply to the gift.
- (4) The charity is to be treated as having made a claim for any exemption which may be available under section 505(1)(c)(ii) of the Taxes Act 1988 (charities: exemption from tax under Case III of Schedule D) as a result of the charity's receipt of the gift (see section 25(10) of the Finance Act 1990).
- (5) In this section—
- “charity” means a charity within the meaning of section 25 of the Finance Act 1990 (see subsection (12)(a) of that section) which, at the time the personal return in question is made, is included (at the request of the charity) in a list maintained for the purposes of this section by the Board;
  - “personal return” means a return under section 8 of the Taxes Management Act 1970 (c. 9) (personal return);
  - “tax repayment” means a repayment (after any set-off that falls to be made against the individual's liabilities) of either or both of—
    - (a) income tax or amounts paid on account of income tax;
    - (b) capital gains tax;
  - and, for the purposes of subsection (1)(b), includes any repayment supplement (within the meaning of section 824 of the Taxes Act 1988 or section 283 of the Taxation of Chargeable Gains Act 1992 (c. 12)).
- (6) In section 25 of the Finance Act 1990 (c. 29) (gift aid) after subsection (12) insert—
- “(13) This section is to be read with—
- (a) section 98 of the Finance Act 2002 (gift aid: election to be treated as if gift made in previous tax year);
  - (b) section 83 of the Finance Act 2004 (gift aid: giving through the self-assessment return).”.

(7) This section has effect in relation to personal returns for the year 2003-04 and subsequent years of assessment.

#### *Gifts with a reservation*

### **84 Charge to income tax by reference to enjoyment of property previously owned**

- (1) Schedule 15 (which contains provisions imposing a charge to income tax by reference to benefits received in certain circumstances by a former owner of property) has effect.
- (2) That Schedule has effect for the year 2005-06 and subsequent years of assessment.

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### *Employment-related securities and options*

#### **85 Relief where national insurance contributions met by employee**

- (1) Schedule 16 to this Act provides—
  - (a) for income tax relief in certain cases where national insurance contributions are met by an employee, and
  - (b) for consequential amendments.
- (2) This section (and that Schedule) come into force in accordance with provision made by the Treasury by order made by statutory instrument.

#### **Commencement Information**

**I9** S. 85 in force at 1.9.2004 by [S.I. 2004/1945, art. 2](#)

#### **86 Shares in employee-controlled companies and unconnected companies**

- (1) Each of the provisions of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities) specified in subsection (2) (exception from charges for certain company shares) is amended in accordance with subsections (3) to (5).
- (2) The provisions are—
  - (a) section 429 (restricted securities),
  - (b) section 443 (convertible securities),
  - (c) section 446R (securities acquired for less than market value), and
  - (d) section 449 (post-acquisition benefits from securities).
- (3) In subsection (1) of each of those sections, after paragraph (b) (but before the word “and” where that word features at the end) insert—

“(ba) subsection (1A) is satisfied.”.
- (4) After subsection (1) of each of those sections insert—

“(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.”.
- (5) In subsection (4) of sections 429, 443 and 446R, and in subsection (3) of section 449, for the words after “are not” substitute “ employment-related securities. ”; and accordingly omit sections 429(5), 443(5), 446R(5) and 449(4).
- (6) In Chapter 3A of that Part of that Act (securities with artificially depressed market value), after section 446I insert—

#### **“446IA Disapplication of exceptions from charges**

- (1) Section 429 (exception from charge under section 426 for certain company shares) does not prevent section 426 (restricted securities: chargeable events) applying in relation to an event if section 446E or 446I(1)(a) would have effect in relation to the event.

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- (2) Section 443 (exception from charge under section 438 for certain company shares) does not prevent section 438 (convertible securities: chargeable events) applying in relation to an event if section 446G, 446H or 446I(1)(b) would have effect in relation to the event.
  - (3) Section 446R (exception from charge under Chapter 3C for certain company shares) does not prevent that Chapter (securities acquired for less than market value) applying in relation to employment-related securities if section 446B would have effect in relation to them.
  - (4) Section 449 (exception from charge under Chapter 4 for certain company shares) does not prevent that Chapter (benefits from securities) applying in relation to a benefit if section 446I(1)(e) would have effect in relation to the benefit.”.
- (7) In Chapter 3B of that Part of that Act (securities with artificially enhanced market value), after section 446N insert—

**“446NA Disapplication of exceptions from charges**

- (1) None of the provisions specified in subsection (2) (exceptions from charges for certain company shares) apply in relation to employment-related securities if the market value of the employment-related securities at the time of the acquisition has been increased by at least 10% by non-commercial increases within the period of 7 years ending with the acquisition.
  - (2) The provisions are—
    - (a) section 429 (restricted securities),
    - (b) section 443 (convertible securities),
    - (c) section 446R (securities acquired for less than market value), and
    - (d) section 449 (post-acquisition benefits from securities).
  - (3) If section 446L (market value on valuation date increased by more than 10% by non-commercial increases during relevant period) applies in relation to employment-related securities, section 429 does not subsequently apply in relation to the employment-related securities.”.
- (8) This section applies on and after 7th May 2004.

**87 Restricted securities with artificially depressed value**

- (1) Section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employee securities with artificially depressed market value: charge on restricted securities) is amended as follows.
- (2) In subsection (1), after “on restricted securities),” insert—
  - “(aa) immediately before the employment-related securities are disposed of (in circumstances which do not constitute such an event) or are cancelled without being disposed of,”.
- (3) For subsections (3) to (6) substitute—
  - “(3) “The relevant period” is the period beginning—

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- (a) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, 7 years before the acquisition, and
    - (b) in any other case, 7 years before the relevant date,and ending with the relevant date.
  - (4) “The relevant date” is—
    - (a) in a case within subsection (1)(a), the date on which the chargeable event concerned occurs,
    - (b) in a case within subsection (1)(aa), the date on which the disposal or cancellation concerned occurs, and
    - (c) in a case within subsection (1)(b), the 5th April concerned.
  - (5) Where this section applies in a case within subsection (1)(aa) or (b), a chargeable event within section 427(3)(a) (lifting of restrictions) is to be treated as occurring in relation to the employment-related securities on the relevant date.
  - (6) In every case where this section applies, subsection (1) of section 428 (amount of charge on restricted securities) applies as if the reference in subsection (2) of that section to what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions were to what would be their market value at the appropriate time but for the matters to be disregarded.
  - (7) “The appropriate time” is—
    - (a) in a case within subsection (1)(a) or (b), the time immediately after the chargeable event concerned, and
    - (b) in a case within subsection (1)(aa), the time immediately before the chargeable event concerned.
  - (8) “The matters to be disregarded” are—
    - (a) any restrictions,
    - (b) the things done as mentioned in subsection (2), and
    - (c) if the employment-related securities are about to be disposed of or cancelled, that fact.
  - (9) Where this section applies in a case within subsection (1)(aa), section 428(1) applies with the omission of the reference to OP.
  - (10) Where this section applies in a case within subsection (1)(a) and the chargeable event concerned is within section 427(3)(c) (disposal for consideration), section 428 applies with the omission of subsection (9) (case where consideration is less than actual market value).”
- (4) This section applies on and after 7th May 2004.
- (5) But if the employment-related securities were acquired before that date, section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) does not apply by virtue of the amendment made by subsection (2) of this section unless their market value would be artificially low immediately before the disposal or cancellation if the date on which the relevant period began were the later of—
- (a) that on which it did begin, and
  - (b) 7th May 2004.

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## 88 Shares under approved plans and schemes

- (1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.
- (2) Omit section 421G (exclusion from Chapters 2 to 4 of Part 7 of shares awarded or acquired under approved plan or scheme).
- (3) In Chapter 2 of Part 7 (restricted securities), after section 431 insert—

### “431A Shares under approved plan or scheme

- (1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.
- (2) Subsection (1) applies to—
  - (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,
  - (b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,
  - (c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and
  - (d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in circumstances in which (in accordance with section 530) no liability to income tax arises.”.
- (4) In section 489 (operation of tax advantages in connection with approved share incentive plans), after subsection (3) insert—
 

“(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.”.
- (5) In sections 505 and 506 (charge on shares ceasing to be subject to approved share incentive plan), after subsection (4) insert—
 

“(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.”.
- (6) In section 519(1) (approved SAYE option schemes: no charge in respect of exercise of option) insert at the end “and
  - (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.”.



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- (7) In section 524(1) (approved CSOP schemes: no charge in respect of exercise of option) insert at the end “and
- (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.”.
- (8) Section 701 (PAYE: meaning of “asset”) is amended as follows.
- (9) In subsection (2)(c)—
- (a) in sub-paragraph (ia), for the words after “employee” substitute “ under a scheme approved under Schedule 4 (approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met; ”,
  - (b) omit sub-paragraph (ii), and
  - (c) in sub-paragraph (iii), after “1996” insert “ where the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the right was obtained or is exercised ”.
- (10) After subsection (3) insert—
- “(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.”.
- (11) This section has effect on and after 18th June 2004 and (so far as it does not relate to the award or acquisition of shares) applies in relation to shares awarded or acquired before that date as well as in relation to those awarded or acquired on or after that date.
- (12) Where section 431A(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (as inserted by subsection (3)) has effect (by virtue of subsection (11)) in relation to shares acquired before 18th June 2004, it applies in relation to them so as to treat an election under section 431(1) of that Act as made in relation to them on that date.
- (13) For the purposes of the application of Chapter 3B of Part 7 of that Act (securities with artificially enhanced market value) by reason of subsections (2) and (11) in relation to shares acquired before 18th June 2004, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date.

## **89 Shares acquired on public offer**

- (1) Section 421F of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (exclusion from Chapters 2 to 4 of Part 7 of shares acquired under terms of offer to the public) is amended as follows.
- (2) In subsection (1), for “Chapters 2 to 4” substitute “ Chapters 2, 3 and 3C ”.
- (3) After that subsection insert—
- “(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—
- (a) of the arrangements under which the right or opportunity under which the shares were acquired, or
  - (b) for which the shares are held,
- is the avoidance of tax or national insurance contributions.”.

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- (4) This section has effect on and after 18th June 2004 and applies in relation to shares acquired before that date as well as in relation to those acquired on or after that date.
- (5) For the purposes of the application of Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (securities with artificially enhanced market value) by reason of subsections (2) and (4) in relation to shares acquired before that date, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date.

## **90 Associated persons etc.**

- (1) Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: securities) is amended as follows.
- (2) In section 421C(2) (meaning of “relevant linked person” for purposes of Chapters 1 to 4), for “are connected or, although not connected, are” substitute “ are or have been connected or (without being or having been connected) are or have been ”.
- (3) In section 472(2) (meaning of “relevant linked person” for purposes of Chapter 5), for “are connected or, although not connected, are” substitute “ are or have been connected or (without being or having been connected) are or have been ”.
- (4) In section 477(3)(c) (chargeable events in relation to employment-related securities options), for the words after “benefit” substitute “ in connection with the employment-related securities option (other than one within paragraph (a) or (b)). ”
- (5) This section has effect on and after 18th June 2004 and applies in relation to securities, interests and options that were employment-related securities or employment-related securities options on that date (as well as those acquired on or after that date).

### *Miscellaneous*

## **91 Income of spouses: jointly held property**

- (1) Section 282A of the Taxes Act 1988 is amended as follows.
- (2) After subsection (4) insert—
  - “(4A) Subsection (1) above shall not apply to income consisting of a distribution arising from property consisting of—
    - (a) close company shares to which either the husband or the wife is beneficially entitled to the exclusion of the other, or
    - (b) close company shares to which they are beneficially entitled in equal or unequal shares.

In this subsection “close company shares” means shares in or securities of a close company; and for this purpose “shares” and “securities” have the same meaning as in Part 6 (see section 254).”
- (3) This section has effect in relation to the year 2004-05 and subsequent years of assessment.

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## **92 Minor amendments of or connected with ITEPA 2003**

Schedule 17 to this Act contains minor amendments of or connected with the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

### **CHAPTER 5**

#### **ENTERPRISE INCENTIVES**

## **93 Enterprise investment scheme**

Schedule 18 (which makes amendments to the enterprise investment scheme) has effect.

## **94 Venture capital trusts**

- (1) In relation to shares issued on or after 6th April 2004 but before 6th April 2006, paragraph 1(5)(a) of Schedule 15B to the Taxes Act 1988 (calculation of income tax relief by reference to lower rate) is to have effect as if the reference to the lower rate were a reference to the higher rate.
- (2) Accordingly, paragraph 3(4) of that Schedule (loss of investment relief) is to have effect in relation to such shares as if the reference to the lower rate were a reference to the higher rate.
- (3) Schedule 19 (which makes amendments relating to venture capital trusts) has effect.

## **95 Corporate venturing scheme**

Schedule 20 (which makes amendments relating to the corporate venturing scheme) has effect.

## **96 Enterprise management incentives: subsidiaries**

- (1) Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) is amended as follows.
- (2) In paragraph 8 (qualifying companies: introduction) after “having only qualifying subsidiaries (see paragraphs 10 and 11),” insert— “ property managing subsidiaries (see paragraphs 11A and 11B), ”.
- (3) In paragraph 10 (the qualifying subsidiaries requirement) for sub-paragraph (2) substitute—
  - “(2) In this paragraph “subsidiary” means any company which the company controls, either on its own or together with any person connected with it.
  - (3) For the purpose of sub-paragraph (2), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).”
- (4) In paragraph 11 (meaning of “qualifying subsidiary”)—
  - (a) in sub-paragraph (2), omit paragraphs (a) to (c),

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- (b) before paragraph (d) of that sub-paragraph insert—
  - “(ca) that the subsidiary is a 51% subsidiary of the holding company;”,
- (c) in paragraph (d) of that sub-paragraph, after “company” insert “ or another of its subsidiaries ”,
- (d) in paragraph (e) of that sub-paragraph, for “the conditions in paragraphs (a) to” substitute “ either of the conditions in paragraphs (ca) and ”,
- (e) omit sub-paragraph (3),
- (f) after sub-paragraph (7) insert—
  - “(8) Sub-paragraph (9) applies at a time when the subsidiary or another company is in administration or receivership.
  - (9) The subsidiary is not to be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company in relation to which the conditions in sub-paragraph (2) are met if—
    - (a) the entry into administration or receivership, and
    - (b) everything done as a consequence of the company concerned being in administration or receivership,
 is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
  - (10) Section 312(2A) of ICTA (meaning of being in administration or receivership) applies for the purposes of sub-paragraphs (8) and (9) as it applies for the purposes of Chapter 3 of Part 7 of ICTA (enterprise investment scheme).”.

(5) After paragraph 11 insert—

#### 11A “The property managing subsidiaries requirement

- (1) A company is not a qualifying company if it has a property managing subsidiary which is not a qualifying 90% subsidiary of the company (see paragraph 11B).
- (2) “Property managing subsidiary” means a qualifying subsidiary of a company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In sub-paragraph (2) “land” and “property deriving its value from land” have the same meaning as in section 776 of ICTA.

#### 11B Meaning of “qualifying 90% subsidiary”

- (1) A company (“the subsidiary”) is a qualifying 90% subsidiary of a company (“the holding company”) if the following conditions are met.
- (2) The conditions are—
  - (a) that the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;

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- (b) that the holding company would—
- (i) in the event of a winding up of the subsidiary, or
  - (ii) in any other circumstances,
- be beneficially entitled to not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
- (c) that the holding company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
- (d) that no person other than the holding company has control of the subsidiary; and
- (e) that no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
- (3) Sub-paragraphs (4) to (10) of paragraph 11 (but not sub-paragraph (6)(b)) apply in relation to the conditions in sub-paragraph (2) above as they apply in relation to the conditions in sub-paragraph (2) of that paragraph.”
- (6) The amendments made by this section have effect in relation to any right to acquire shares granted on or after 17th March 2004.

## CHAPTER 6

### EXEMPTION FROM INCOME TAX FOR CERTAIN INTEREST AND ROYALTY PAYMENTS

#### *Introductory*

#### **F<sup>2</sup>97** Introductory

.....

#### **Textual Amendments**

- F2** S. 97 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 631, Sch. 3](#) (with [Sch. 2](#))

#### *Exemption from income tax*

#### **F<sup>3</sup>98** Exemption from income tax for certain interest and royalty payments

.....

#### **Textual Amendments**

- F3** S. 98 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 632, Sch. 3](#) (with [Sch. 2](#))

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#### **F<sup>4</sup>99 Permanent establishments and “25% associates”**

.....

##### **Textual Amendments**

- F4** S. 99 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 633, Sch. 3](#) (with Sch. 2)

#### *Exemption notices*

#### **F<sup>5</sup>100 Interest payments: exemption notices**

.....

##### **Textual Amendments**

- F5** S. 100 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 634, Sch. 3](#) (with Sch. 2)

#### *Payment without deduction*

#### **101 Payment of royalties without deduction at source**

- (1) Where—
- (a) section 349(1) of the Taxes Act 1988 (certain payments to be made subject to deduction of income tax) applies to a payment of a royalty, but
  - (b) at the time the payment is made, the company making the payment reasonably believes that [F<sup>6</sup>section 758 (exemption from income tax for certain interest and royalty payments) of the Income Tax (Trading and Other Income) Act 2005] applies to the payment,
- the company may, if it thinks fit, make the payment without deduction of tax under section 349(1).
- (2) But if [F<sup>7</sup>section 758 of the Income Tax (Trading and Other Income) Act 2005] does not in fact apply to the payment, section 350 of, and Schedule 16 to, the Taxes Act 1988 (charge to tax where payments are made under section 349 etc) are to have effect as if subsection (1) never applied in relation to the payment.
- (3) If the Board are not satisfied that [F<sup>7</sup>section 758 of the Income Tax (Trading and Other Income) Act 2005] will apply to one or more payments of royalties to be made by a company, they may direct the company that subsection (1) is not to apply to the payment or payments.
- (4) A direction under subsection (3) may be varied or revoked by a subsequent such direction.
- (5) If, before a payment of a royalty is made, the company beneficially entitled to the income in respect of which the payment is to be made—
- (a) believed that [F<sup>8</sup>section 758 of the Income Tax (Trading and Other Income) Act 2005] would apply to the payment, but

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- (b) has subsequently become aware that any of [<sup>F9</sup>conditions A to C in that section] has ceased to be satisfied,  
it must without delay notify the Board and the company which is to make the payment.
- (6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (c. 36) (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to subsections (1) to (4) of this section.
- (7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6), has effect as if—
- (a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3,000, and
  - (b) sub-paragraphs (2) and (3) were omitted.
- [<sup>F10</sup>(8) In a case where section 763 of the Income Tax (Trading and Other Income) Act 2005 (special relationships) applies, this section has effect in relation to only so much of the payment as does not exceed the arm's length amount (within the meaning of that section).
- (9) Expressions used in this section and in sections 757 to 767 of the Income Tax (Trading and Other Income) Act 2005 have the same meaning in this section as in those sections.]

#### Textual Amendments

- F6** Words in s. 101(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 635\(2\)](#) (with Sch. 2)
- F7** Words in s. 101(2)(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 635\(3\)](#) (with Sch. 2)
- F8** Words in s. 101(5)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 635\(4\)\(a\)](#) (with Sch. 2)
- F9** Words in s. 101(5)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 635\(4\)\(b\)](#) (with Sch. 2)
- F10** S. 101(8)(9) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 635\(5\)](#) (with Sch. 2)

## 102 Claim for tax deducted at source from exempt interest or royalty payments

A claim for relief under [<sup>F11</sup>section 758 of the Income Tax (Trading and Other Income) Act 2005] in respect of a payment which is made subject to deduction of tax under section 349 of the Taxes Act 1988 shall be made to the Board.

#### Textual Amendments

- F11** Words in s. 102 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 636](#) (with Sch. 2)

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### *Special relationships and anti-avoidance*

#### **<sup>F12</sup>103 Special relationships**

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##### **Textual Amendments**

**F12** S. 103 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), Sch. 1 para. 637, [Sch. 3](#) (with Sch. 2)

#### **<sup>F13</sup>104 Anti-avoidance**

.....

##### **Textual Amendments**

**F13** S. 104 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), Sch. 1 para. 638, [Sch. 3](#) (with Sch. 2)

### *Supplementary*

#### **105 Consequential amendments**

- (1) Section 98 of the Taxes Management Act 1970 (c. 9) (special returns etc) is amended as follows.
- (2) In subsection (4A)(b), after “(4D)” insert “, (4DA)”.
- (3) After subsection (4D) insert—
 

“(4DA) A payment is within this subsection if—

  - (a) it is a payment to which section 349(1) of the principal Act (requirement to deduct tax) applies,
  - (b) a company, purporting to rely on section 101 of the Finance Act 2004 (payment of royalties without deduction at source), makes the payment without deduction of tax under section 349(1) of the principal Act, and
  - (c) at the time the payment is made section 98 of the Finance Act 2004 does not apply to the payment and the company—
    - (i) does not believe that that section does so apply, or
    - (ii) if it does so believe, cannot reasonably do so.”
- (4) In section 18 of the Taxes Act 1988 (Schedule D) after subsection (5) insert—
 

“(6) This section is subject to Chapter 6 of Part 3 of the Finance Act 2004 (exemption from income tax for certain interest and royalty payments).”
- (5) In section 349 of the Taxes Act 1988 (certain payments to be made subject to deduction of income tax) after subsection (6) insert—



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“(7) This section is subject to Chapter 6 of Part 3 of the Finance Act 2004 (exemption from income tax for certain interest and royalty payments).”.

#### **F14 106 Transitional provision**

.....

##### **Textual Amendments**

**F14** S. 106 repealed (6.4.2005) by *Income Tax (Trading and Other Income) Act 2005* (c. 5), s. 883(1), Sch. 1 para. 639, **Sch. 3** (with Sch. 2)

## **CHAPTER 7**

### **SAVINGS INCOME: DOUBLE TAXATION ARISING FROM WITHHOLDING TAX**

#### *Introductory*

#### **107 Introductory**

- (1) This Chapter has effect for the purpose of giving relief from double taxation in respect of special withholding tax.
- (2) Such relief is given—
  - (a) by set-off against income tax or capital gains tax;
  - (b) to the extent that it cannot be so set off, by repayment.
- (3) “Special withholding tax” means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—
  - (a) in the case of a member State, Article 11 of Council Directive 2003/48/ EC of 3rd June 2003 on taxation of savings income in the form of interest payments (“the Savings Directive”), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (4) “International arrangements”, in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income under—
  - (a) the law of the United Kingdom, or
  - (b) that law and the law of that territory.
- (5) For the purposes of Part 18 of the Taxes Act 1988 (double taxation relief)—
  - (a) relief from double taxation in respect of special withholding tax is not to be available under Chapters 1 and 2 of that Part; and
  - (b) special withholding tax is not to be regarded as foreign tax for the purposes of Chapter 2 of that Part.
- (6) Sections 113 and 114 also make provision for implementing—

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- (a) Article 13(2) of the Savings Directive (provision of certificate to avoid levy of special withholding tax), and
  - (b) any corresponding provision of international arrangements.
- (7) In this Chapter—
- “double taxation arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories);
  - “international arrangements” has the meaning given by subsection (4);
  - “the Savings Directive” has the meaning given by subsection (3)(a);
  - “savings income”—
- (a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression “interest payment” has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and
  - (b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned;
- “special withholding tax” has the meaning given by subsection (3).
- (8) In the application of this Chapter in relation to capital gains tax, expressions used in this Chapter and in the Taxation of Chargeable Gains Act 1992 (c. 12) have the same meaning in this Chapter as in that Act.

*Credit etc for special withholding tax*

**108 Income tax credit etc for special withholding tax**

- (1) This section applies where—
- (a) a person is chargeable to income tax for a year of assessment in respect of a payment of savings income or would be so chargeable but for any exemption or relief which has effect in respect of that payment,
  - (b) special withholding tax is levied in respect of the payment, and
  - (c) the person is resident in the United Kingdom for that year of assessment.
- (2) On the making of a claim, income tax (“the deemed tax”) of an amount equal to the amount of the special withholding tax levied is to be treated as having been—
- (a) paid by or on behalf of the person for that year of assessment, and
  - (b) deducted at source for that year of assessment for the purposes of the provisions in subsection (3).
- (3) The provisions are—
- section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);
  - section 8 of that Act (personal return);
  - section 8A of that Act (trustee’s return);
  - section 9 of that Act (returns to include self-assessment);
  - section 59A of that Act (payments on account of income tax);
  - section 59B of that Act (payments of income tax and capital gains tax);

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section 824(3) of the Taxes Act 1988 (repayment supplements: determination of relevant time).

- (4) Where the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—
- (a) the excess is to be set against any capital gains tax for which he is liable for the year of assessment, and
  - (b) he is entitled to a repayment of income tax in respect of any remaining balance of that excess.
- (5) But subsection (2) does not apply in relation to an amount of special withholding tax levied if—
- (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

## 109 Capital gains tax credit etc for special withholding tax

- (1) This section applies where—
- (a) a person makes a disposal of assets in a year of assessment,
  - (b) on the assumption that a chargeable gain were to accrue on the disposal,—
    - (i) it would accrue to the person, and
    - (ii) he would be chargeable to capital gains tax in respect of it,
  - (c) the consideration for the disposal consists of or includes an amount of savings income,
  - (d) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal, and
  - (e) the person is resident in the United Kingdom for that year of assessment.
- (2) For the purposes of subsection (1)(b)(ii), there are to be disregarded—
- (a) any deductions that fall to be made from the total amount referred to in section 2(2) of the Taxation of Chargeable Gains Act 1992 (c. 12) (deductions for allowable losses),
  - (b) section 3 of that Act (annual exempt amount), and
  - (c) section 77(1) of that Act (settlor with interest in settlement: trustees not to be chargeable in certain circumstances).
- (3) On the making of a claim, capital gains tax (“the deemed tax”) of an amount equal to the amount of the special withholding tax levied is to be treated as having been paid—
- (a) by or on behalf of the person for that year of assessment, and
  - (b) for the purposes of section 283(2) of the Taxation of Chargeable Gains Act 1992 (repayment supplements: determination of relevant time), on 31st January next following that year of assessment.
- (4) For the purposes of the application of the following provisions in relation to the person for that year of assessment, references in those provisions to income tax deducted at source for that year of assessment are to be taken to include the amount of the deemed tax—

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section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);  
 section 8 of that Act (personal return);  
 section 8A of that Act (trustee's return);  
 section 9 of that Act (returns to include self-assessment);  
 section 59B of that Act (payments of income tax and capital gains tax).

- (5) Where the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—
- (a) the excess is to be set against any income tax for which he is liable for the year of assessment, and
  - (b) he is entitled to a repayment of capital gains tax in respect of any remaining balance of that excess.
- (6) But subsection (3) does not apply in relation to an amount of special withholding tax levied if—
- (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) he was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.
- (7) To the extent that section 108 of this Act applies in relation to an amount of special withholding tax levied (or would so apply on the making of a claim), this section does not apply in relation to that amount.

#### **110 Credit under Part 18 of Taxes Act 1988 to be allowed first**

- (1) Any credit for foreign tax that falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) against income tax or capital gains tax is to be so allowed before effect is given to section 108 or 109.
- (2) In this section “foreign tax” has the same meaning as in Chapter 2 of Part 18 of the Taxes Act 1988 (see section 792(1) of that Act).

#### *Computation of income etc*

#### **111 Computation of income etc subject to special withholding tax only**

- (1) This section applies where—
  - (a) a person is chargeable to income tax in respect of a payment of savings income, or
  - (b) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income,
 and the conditions in subsections (2) and (3) are satisfied.
- (2) The first condition is that special withholding tax is levied in respect of—
  - (a) the payment of savings income, or
  - (b) the whole or any part of the consideration for the disposal.

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- (3) The second condition is that no credit for foreign tax in respect of the savings income or the chargeable gain in question falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) (so that section 795(1) and (2) of that Act, which make similar provision to subsections (4) to (6) of this section, do not apply).
- (4) If income tax is payable by reference to the amount of the savings income received in the United Kingdom, the amount received is to be treated for the purposes of income tax as increased by the amount of special withholding tax levied in respect of it.
- (5) If capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom, the amount received is to be treated for the purposes of capital gains tax as increased by an amount equal to—

$$\text{SWT} \times \frac{\text{GUK}}{G - \text{SWT}}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

- (6) If neither subsection (4) nor subsection (5) applies, then, in computing—
- (a) the amount of the income or gain in question for the purposes of income tax, or
  - (b) the amount of any chargeable gain for the purposes of capital gains tax,
- no deduction is to be made for special withholding tax (whether in respect of the same or any other income or gain or, as the case may be, chargeable gains).
- (7) In this section references to special withholding tax are to special withholding tax in respect of which a claim has been made under this Chapter.

## 112 Computation of income etc subject to foreign tax and special withholding tax

- (1) Section 795 of the Taxes Act 1988 (double taxation relief: computation of income subject to foreign tax) is amended as follows.
- (2) In subsection (1) (remittance basis: grossing up) after “increased by” insert “ — (a) ” and at the end insert—
- “, and
- (b) the amount of any special withholding tax levied in respect of the income.”.
- (3) In subsection (2)(a) (other cases: no deduction for foreign tax) after “foreign tax” insert “ or special withholding tax ”.
- (4) After subsection (4) insert—
- “(5) In this section—

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- (a) “special withholding tax” has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and
  - (b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.”.
- (5) Section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12) (which applies Chapters 1 and 2 of Part 18 of the Taxes Act 1988 in relation to capital gains tax) is amended as follows.

- (6) After subsection (1) insert—

“(1A) Subsection (1B) below applies where—

- (a) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income, and
- (b) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.

- (1B) In section 795 of the Taxes Act, as applied by this section, for the reference in subsection (1)(b) to the amount of any special withholding tax levied in respect of the income, there shall be substituted a reference to an amount equal to—

$$\text{SWT} \times \frac{\text{GUK}}{G - \text{SWT}}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

- (1C) In subsections (1A) and (1B) above “savings income” and “special withholding tax” have the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107 of that Act); and references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.”.

### *Certificates to avoid levy of special withholding tax*

## **113 Issue of certificate**

- (1) This section has effect for enabling the Inland Revenue to issue certificates to be used under the law of a territory outside the United Kingdom implementing—
- (a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to his paying agent certificate drawn up by competent authority of his member State of residence for tax purposes), or

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- (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (2) If, on the written application of a person, the Inland Revenue are satisfied that the applicant has provided them with—
- (a) the required information, and
  - (b) such documents as they may require to verify that information,
- the Inland Revenue must issue a certificate to the applicant.
- (3) “The required information” means—
- (a) the applicant’s name and address,
  - (b) his National Insurance number or, if he does not have one, his date, town and country of birth,
  - (c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to such payments,
  - (d) the name and address of the paying agent who is to make such payments of savings income to, or to secure such payments of savings income for, the applicant, and
  - (e) the period, not exceeding three years, for which the applicant would like the certificate to be valid.
- (4) A certificate under this section must be in writing and must state—
- (a) the information mentioned in subsection (3)(a) to (d), and
  - (b) the period of validity of the certificate (which must not exceed three years).
- (5) A certificate under this section must be issued no later than the end of the period of two months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).
- (6) In this section and section 114 “the Inland Revenue” means any officer of the Commissioners of Inland Revenue.
- (7) Where the requirements of—
- (a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and
  - (b) any corresponding provision of any international arrangements,
- differ to any extent, subsections (3) to (5) shall have effect, in their application in relation to the international arrangements concerned, with such modifications as may be required by virtue of those arrangements.

#### **114 Refusal to issue certificate and appeal against refusal**

- (1) This section applies if, on an application for a certificate under section 113, the Inland Revenue are not satisfied that the applicant has provided them with the information and documents required by or under subsection (2) of that section.
- (2) The Inland Revenue must give written notice (“the refusal notice”) to the applicant of their refusal to issue a certificate.
- (3) The refusal notice must specify the reasons for the refusal.

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- (4) The applicant may by written notice (“the appeal notice”) appeal to the Special Commissioners against the refusal.
- (5) The appeal notice must be given to the Inland Revenue within 30 days of the date of the refusal notice.
- (6) Part 5 of the Taxes Management Act 1970 (c. 9) (appeals and other proceedings) shall apply in relation to an appeal under this section.
- (7) On the appeal, the Special Commissioners may—
  - (a) confirm the refusal notice, or
  - (b) quash it and require the Inland Revenue to issue a certificate.

### *SupplementaryM*

## **115 Supplementary**

- (1) In section 792 of the Taxes Act 1988 (double taxation relief: interpretation of the credit code) in subsection (1), in the definition of “foreign tax”, at the end insert “ (other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004) ”.
- (2) In section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) in subsection (2), at the end insert “ and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax) ”.
- (3) In section 278 of the Taxation of Chargeable Gains Act 1992 (c. 12) (allowance for foreign tax) in subsection (1), after “section 277” insert “ and to section 111 of the Finance Act 2004 (computation of chargeable gains subject to special withholding tax) ”.
- (4) Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) (gross revenues to be paid to Exchequer) is to be construed as allowing the Commissioners of Inland Revenue to deduct payments for or in respect of amounts repaid in accordance with this Chapter before causing the gross revenues of their department to be paid to the account mentioned in that section.

## **CHAPTER 8**

### CHARGEABLE GAINS

## **116 Restriction of gifts relief etc**

Schedule 21 (which makes provision for relief under section 165 or 260 of the Taxation of Chargeable Gains Act 1992 (c. 12) not to be available on certain transfers to settlor-interested settlements etc or on transfers of shares etc to companies, and makes minor amendments in sections 79 and 281 of that Act) has effect.

## **117 Private residence relief**

Schedule 22 (which makes provision about private residence relief) has effect.



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## 118 Authorised unit trusts: treatment of umbrella schemes

- (1) The Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In section 99(2) (application of Act to unit trust schemes: definitions)—
  - (a) in the opening words, after “Subject to subsection (3)” insert “and section 99A”; and
  - (b) for paragraph (b) substitute—
    - “(aa) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme;
    - (b) “authorised unit trust” means, as respects an accounting period, a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force during the whole or part of that period.”
- (3) After that section insert—

### “99A Authorised unit trusts: treatment of umbrella schemes

- (1) In this section an “umbrella scheme” means an authorised unit trust—
  - (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them, and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another,and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.
- (2) For the purposes of this Act (except subsection (1))—
  - (a) each of the parts of an umbrella scheme shall be regarded as an authorised unit trust, and
  - (b) the scheme as a whole shall not be regarded as an authorised unit trust or as any other form of collective investment scheme.
- (3) In this Act, in relation to a part of an umbrella scheme, any reference to a unit holder is to a person for the time being having rights in the separate pool to which the part of the umbrella scheme relates.
- (4) Nothing in subsections (2) or (3) shall prevent—
  - (a) gains accruing to an umbrella scheme being regarded as gains accruing to an authorised unit trust for the purposes of section 100(1) (exemption for authorised unit trusts etc);
  - (b) a transfer of business to an umbrella scheme being regarded as a transfer to an authorised unit trust for the purposes of section 139(4) (exclusion of transfers to authorised unit trusts etc);
  - (c) a disposal by a unit holder of units in an umbrella scheme being regarded as a disposal by him of units in an authorised unit trust for the purposes of section 271(1)(j) (exemption for disposal of units in an authorised unit trust which is also an approved personal pension scheme etc).”
- (4) In section 288 (interpretation)—

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- (a) in subsection (1), in the definition of “collective investment scheme”, at the end insert “ (subject to section 99A) ”;
  - (b) in the table in subsection (8) (index of general definitions)—
    - (i) in the first column after “Unit trust scheme” insert “ and “unit holder” ”;
    - (ii) in the second column for “s 99” substitute “ ss 99 and 99A ”.
- (5) The amendments made by this section have effect in relation to years of assessment and accounting periods beginning on or after 1st April 2004.

## CHAPTER 9

### AVOIDANCE INVOLVING LOSS RELIEF OR PARTNERSHIP

#### *Individuals benefited by film relief*

#### **119 Individuals benefited by film relief**

- (1) This section applies if—
- (a) an individual has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a film-related loss sustained by him in a trade carried on solely or in partnership (“a relevant claim”);
  - (b) there is a disposal on or after 10 December 2003 of a right of the individual to profits arising from the trade (a “relevant disposal”); and
  - (c) an exit event occurs.
- (2) An “exit event” occurs when any of the following happens—
- (a) on or after 10 December 2003 the individual receives any non-taxable consideration for a relevant disposal (whether or not he also receives any taxable consideration for it);
  - (b) on or after 10 December 2003 the losses claimed become greater than the individual’s capital contribution to the trade (whether because of a claim or a decrease in that capital contribution);
  - (c) on or after 10 December 2003 there is an increase in the amount (if any) by which the losses claimed exceed the individual’s capital contribution to the trade.
- (3) A “chargeable event” occurs whenever—
- (a) the individual makes a relevant claim, if by the time the claim has been made a relevant disposal and an exit event have occurred; or
  - (b) a relevant disposal occurs, if by the time it has occurred an exit event has occurred and the individual has made a relevant claim; or
  - (c) an exit event occurs, if by the time it has occurred a relevant disposal has occurred and the individual has made a relevant claim.
- (4) Where a chargeable event occurs<sup>F15</sup>—
- (a) the individual shall be treated as receiving at the time of that event an amount of income equal to the chargeable amount;

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- (b) that income (which shall not be treated as profits of the trade) shall be chargeable to income tax for the year of assessment in which the event occurs; and
  - (c) the individual shall be liable for any tax so chargeable.]
- (5) The “chargeable amount” is an amount equal to the sum of the following (computed as at the time immediately after the chargeable event)—
- (a) so much of the total amount or value of any consideration received by the individual for the relevant disposal (or, if there has been more than one, for relevant disposals) as is non-taxable; and
  - (b) the amount (if any) by which the losses claimed exceed the individual’s capital contribution to the trade;
- but this is subject to section 122(2).
- (6) For the purposes of subsection (1)(a) it is immaterial when the claim is made.
- (7) It is immaterial whether the trade is still being carried on by the individual (or by anyone else) when a chargeable event occurs.

#### Textual Amendments

**F15** S. 119(4)(a)-(c) substituted for s. 119(4)(a)(b) and words (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 640](#) (with [Sch. 2](#))

## 120 “Disposal of a right of the individual to profits arising from the trade”

- (1) The reference in section 119(1)(b) to a disposal of a right of the individual to profits arising from the trade includes, in particular—
- (a) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) where the right arises from the trade;
  - (b) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right arising from the trade;
  - (c) a change in the individual’s entitlement to any profits arising from the trade such that his share of the profits is reduced or extinguished;
  - (d) a change in the individual’s entitlement to any losses arising from the trade such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;
  - (e) the disposal, giving up or loss of the individual’s interest in a partnership that carries on the trade, including the dissolution of the partnership.
- (2) It is immaterial for the purposes of subsection (1)(a) whether the right is disposed of alone or as part of a larger disposal (and the references here to disposal include giving up or loss).
- (3) If there is an agreement under which the individual is entitled—
- (a) to a particular share of any profits or losses arising from the trade in a period, and
  - (b) to a different share of any profits or losses arising from the trade in a succeeding period (“the later period”),

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his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(c) and (d) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a “share” of profits or losses includes a nil share.

## **121 “The losses claimed” and “the individual’s capital contribution to the trade”**

- (1) In section 119 “the losses claimed” means the total amount of any film-related losses sustained by the individual in the trade in any years of assessment, to the extent that they are losses—
- (a) in respect of which the individual has (at any time) claimed relief under section 380 or 381 of the Taxes Act 1988; or
  - (b) that he has (at any time) claimed as allowable losses under section 72 of the Finance Act 1991 (c. 31).
- [<sup>F16</sup>less the amount of any relevant reclaimed relief.]

- [<sup>F17</sup>(1A) The “amount of any relevant reclaimed relief” means whichever is the lesser of—
- (a) the total of any amounts which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381 of the Taxes Act 1988) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade, and
  - (b) the total amount of any film-related losses sustained by the individual in the trade in any eligible years of assessment within the meaning of section 74 of the Finance Act 2005 to the extent that they are losses in respect of which he has at any time claimed relief as described in paragraph (a) or (b) of subsection (1) above.]
- (2) In section 119 “the individual’s capital contribution to the trade” means (subject to section 122(1)) the amount that the individual has contributed to the trade as capital, less so much of that amount (if any) as—
- (a) he has directly or indirectly drawn out or received back;
  - (b) he is entitled so to draw out or receive back;
  - (c) he has had directly or indirectly reimbursed to him by any person;
  - (d) he is entitled to require any person so to reimburse to him.
- (3) In relation to a member of a limited liability partnership, the reference in subsection (2) to the amount contributed to the trade as capital shall be read as a reference to the amount contributed to the limited liability partnership as capital.
- (4) In subsection (2) references to reimbursement include reimbursement effected by discharging or assuming all or part of a liability of the individual.
- (5) Subsection (4) shall not be taken to limit what is to be treated for the purposes of subsection (2) as the receipt back or reimbursement of an amount.
- (6) An amount drawn out or received back that would otherwise fall within subsection (2) (a), or an entitlement that would otherwise fall within subsection (2)(b), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

- [<sup>F18</sup>(7) This section is subject to provision made by regulations under section 122A (partners: meaning of “capital contribution to the trade”).]

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### Textual Amendments

**F16** Words in s. 121(1) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), s. 78(3)(a)(4)

**F17** S. 121(1A) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), s. 78(3)(b)(4)

**F18** S. 121(7) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), s. 79(2)(4)

## 122 Computing the chargeable amount

- (1) Where a chargeable event occurs, anything treated for the purposes of section 119(5) (a) as consideration received by the individual for a relevant disposal shall not also be deducted under section 121(2)(a) to (d) in computing the individual's capital contribution to the trade for the purposes of section 119(5)(b).
- (2) Where successive chargeable events occur as respects the individual and the trade—
  - (a) any consideration that is taken into account under section 119(5)(a) in computing the chargeable amount on an earlier chargeable event shall not be included again in computing the chargeable amount on a later chargeable event; and
  - (b) in computing the chargeable amount on a later chargeable event, any amount found under section 119(5)(b) shall be reduced (but not below nil) by the total of any amounts found under section 119(5)(b) (read with this paragraph) on earlier chargeable events.
- (3) In computing the chargeable amount in any case, any consideration given to the individual for a relevant disposal shall be treated as if it had been received free of any deduction actually made from it in consideration of any person's agreeing to or facilitating a relevant disposal or exit event.

### [<sup>F19</sup>122A Partners: meaning of “capital contribution to the trade”

- (1) This section applies for the purposes of section 119 where an individual makes a relevant claim (within the meaning of subsection (1)(a) of that section) in respect of a film-related loss sustained by him in a trade carried on in partnership (“the relevant trade”).
- (2) The Board may by regulations provide that for the purposes of determining under section 119—
  - (a) whether an exit event within the meaning of subsection (2)(b) or (c) of that section occurs on or after 2nd December 2004, and
  - (b) where such an event occurs on or after that date, the chargeable amount within the meaning of subsection (5) of that section,
 any amount of a description specified in the regulations is to be excluded when computing the amount of the individual's capital contribution to the relevant trade.
- (3) Regulations under this section may—
  - (a) make provision having effect before the date on which the regulations are made,
  - (b) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be necessary or expedient, and
  - (c) make different provision for different cases or different purposes.

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- (4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the Finance Act 2005.
- (5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.]

#### Textual Amendments

**F19** S. 122A inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), s. 79\(1\)\(4\)](#)

### 123 “Film-related losses” and “non-taxable consideration”

- (1) For the purposes of sections 119<sup>[F20]</sup>, 121 and 122A] a loss is a “film-related loss” if the computation of profits or losses that it results from is made in accordance with <sup>[F21]</sup>any provision of Chapter 9 of Part 2 of the Income Tax (Trading and Other Income) Act 2005.]
- (2) References in section 119 to “non-taxable” consideration are to consideration that (apart from section 119) is not chargeable to income tax; and the reference to “taxable” consideration is to be read accordingly.

#### Textual Amendments

**F20** Words in s. 123(1) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), s. 79\(3\)\(4\)](#)

**F21** Words in s. 123(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 641](#) (with Sch. 2)

*Individuals in partnership: restriction of relief*

### 124 Restriction of relief: non-active partners

- (1) After section 118ZD of the Taxes Act 1988 there is inserted—

*“Non-active general partners and non-active members of limited liability partnerships*

#### **118ZE Restriction on relief for non-active partners**

- (1) This section applies to an amount which may be given to an individual under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment.
- (2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—
  - (a) the amount given, or
  - (b) (as the case may be) the aggregate amount,
 does not exceed the amount of the individual’s contribution to the trade as at the end of that year of assessment.

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- (3) A “qualifying year of assessment” means a year of assessment—
- (a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,
  - (b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),
  - (c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,
  - (d) the basis period for which ends on or after 10 February 2004, and
  - (e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.
- (4) In this section—
- (a) a “general partner” means any partner who is not a limited partner, and
  - (b) “limited partner” has the meaning given by section 117(2),
- and in paragraph (a) “any partner” does not include a member of a limited liability partnership.
- (5) In this section and sections 118ZF to 118ZK, “basis period” means (subject to subsection (6)) the basis period given by sections 60 to 63 as applied by section 111(4) and (5).
- (6) The basis period for a year of assessment to which section 61(1) applies is to be taken for the purposes of this section and sections 118ZF to 118ZK to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.
- (7) In subsection (1) “a trade” does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd’s underwriters).
- (8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

#### **118ZF Meaning of “the aggregate amount”**

- (1) In section 118ZE(2) “the aggregate amount” means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section 353, 380 or 381 in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (2).
- (2) A year of assessment falls within this subsection if—
- (a) it is a qualifying year of assessment within the meaning of section 118ZE, or
  - (b) it is a year of assessment—
    - (i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and
    - (ii) the basis period for which ends on or after 10 February 2004.

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### **118ZG “The individual’s contribution to the trade”**

- (1) For the purposes of section 118ZE(2), the individual’s contribution to the trade at any time (“the relevant time”) is the sum of—
  - (a) the amount subscribed by him,
  - (b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money’s worth, and
  - (c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.
  
- (2) For the purposes of subsection (1)(a) the “amount subscribed” by an individual is the sum of—
  - (a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and
  - (b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—
    - (i) the pre-announcement allowance (within the meaning given by section 118ZJ),
    - (ii) the aggregate of any amounts given to him at any time under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (3), and
    - (iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).
  
- (3) A year of assessment falls within this subsection if—
  - (a) it does not fall within section 118ZE(3)(d), and
  - (b) it is either—
    - (i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or
    - (ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).
  
- (4) The individual’s “withdrawn capital” is so much, if any, of the amount that he has contributed to the trade as capital as—
  - (a) he has previously, directly or indirectly, drawn out or received back,
  - (b) he so draws out or receives back during the period of five years beginning with the relevant time,
  - (c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or
  - (d) he is or may be entitled to require another person to reimburse to him.
  
- (5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.



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- (6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

#### **118ZH “A significant amount of time”**

- (1) For the purposes of section 118ZE the individual shall be treated as having “devoted a significant amount of time to the trade” in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.
- (2) “The relevant period” means the basis period for the year of assessment in question, except that—
- if the basis period is less than six months and begins with the date when the individual first carried on the trade, “the relevant period” means six months beginning with that date, and
  - if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, “the relevant period” means six months ending with that date.
- (3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment under Case VI of Schedule D.

#### **118ZI Carry forward of unrelieved losses of non-active partners**

- (1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—
- the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and
  - any of his total restricted loss remains outstanding.
- (2) His “total restricted loss” means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.
- (3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—
- any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or
  - (if no loss is sustained) a loss of that amount were so sustained.
- (4) To ascertain whether any (and, if so, how much) of the individual’s total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—

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- (a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and
  - (b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).
- (5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—
- (a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and
  - (b) any loss deemed by subsection (3)(b) to have been so sustained,
- shall be treated as having been sustained in a qualifying year of assessment.
- (6) Subsection (7) applies where the subsequent year of assessment—
- (a) is one in which the trade is not carried on in partnership by the individual, but
  - (b) is one in which he contributes to the assets of the partnership on its winding up.
- (7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—
- (a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or
  - (b) a loss deemed by subsection (3)(b) to have been so sustained.
- (8) In this section “qualifying year of assessment” has the meaning given by section 118ZE.

### **18ZJ Commencement: the first restricted year**

- (1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 (“the first restricted year”).
- (2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and “the first restricted year” means that year of assessment.
- (3) Where this section applies, section 118ZE(2) shall have effect as if for the words from “only to the extent that” there were substituted “only to the extent that the total amount given under section 353, 380 and 381 in respect of losses sustained by him in the trade, and interest paid by him in connection with carrying it on, in that year of assessment does not exceed the sum of—
- (a) the pre-announcement allowance, and
  - (b) the post-announcement allowance.”
- (4) The “pre-announcement allowance” is the sum of—
- (a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, and

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- (b) any interest paid by him in that period in connection with the carrying on of the trade.
- (5) The “post-announcement allowance” is so much of—
- (a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, and
  - (b) any interest paid by him in that period in connection with the carrying on of the trade,
- as does not exceed the individual’s contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.
- (6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—
- (a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and
  - (b) subject to subsection (8), the individual’s share of the losses shall be determined according to his interest in the partnership during that period.
- (7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—
- (a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and
  - (b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.
- (8) If the individual had an interest in the partnership at any time that falls within—
- (a) the basis period for the first restricted year, and
  - (b) the period beginning with 10 February 2004 and ending with 25 March 2004,
- he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

### **118ZK Transitional provision for years after the first restricted year**

- (1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.
- (2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—

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- (a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or
  - (b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 where the expenditure to which the deduction relates was incurred before 10 February 2004.
- (3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.
- (4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.
- (5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 shall be determined on such basis as is just and reasonable.
- (6) In this section “the first restricted year” and “the pre-announcement allowance” have the meanings given by section 118ZJ.”
- (2) In section 117(2) of the Taxes Act 1988, in paragraph (a) of the definition of “the aggregate amount”, after “a relevant year of assessment” there is inserted “ or a qualifying year of assessment within the meaning of section 118ZE ”.
- (3) Section 118ZB of the Taxes Act 1988 (restriction on relief: members of limited liability partnerships) is renumbered as subsection (1) of that section and after that provision there is added—
- “(2) However, section 117 does not apply in relation to a loss sustained by an individual in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment within the meaning of section 118ZE.”
- (4) In section 118ZD of the Taxes Act 1988 (carry forward of unrelieved losses by members of limited liability partnerships), in subsection (2), for “and 118” there is substituted “ , 118 and 118ZE ”.

## 125 Partnerships exploiting films

After section 118ZK of the Taxes Act 1988 (inserted by section 124) there is inserted—

### *“Partnerships exploiting films*

#### **118ZL Partnerships exploiting films**

- (1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss (“the loss in question”) sustained by him—
- (a) in a trade consisting of or including the exploitation of films, and
  - (b) in an affected year of assessment,

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none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).

- (2) An “affected year of assessment” means a year of assessment at any time during which the individual carried on the trade in partnership which is also—
- (a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,
  - (b) a year of assessment in which he did not devote a significant amount of time to the trade, and
  - (c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.
- (3) For the purposes of subsection (2)(c)—
- (a) “a relevant agreement” means—
    - (i) an agreement that was made with a view to the individual’s carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or
    - (ii) an agreement related to an agreement falling within subparagraph (i),
  - (b) an agreement “guarantees” the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and
  - (c) it is immaterial when the amount of income would be received under the agreement.
- (4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.
- (5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.
- (6) Expenditure is exempt expenditure for the purposes of this section if it is—
- (a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or
  - (b) expenditure that, for the purposes of the computation required by section 111(2), was deducted under section 41 or 42 of the Finance (No. 2) Act 1992, or
  - (c) incidental expenditure that, although deductible apart from section 41 or 42 of that Act, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under either of those sections.
- (7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

### **118ZM Partnerships exploiting films: supplementary**

- (1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.

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- (2) Section 118ZH (meaning of “a significant amount of time” etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.
- (3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) The reference in section 118ZL(6) to the acquisition of a film is a reference to the acquisition of the master negative or any master tape or master disc of the film; and this subsection is to be construed in accordance with section 43(1) and (2)(b) of the Finance (No. 2) Act 1992.
- (5) In section 118ZL(6) “incidental expenditure” means expenditure on management, administration or obtaining finance.
- (6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.
- (7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.
- (8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3).”

*Individuals in partnership: exit charge*

**126 Losses derived from exploiting licence: introductory**

- (1) Section 127 (charge to income tax) applies in relation to an individual who carries on or has carried on a trade in partnership if—
  - (a) there is a disposal on or after 10 February 2004 of—
    - (i) any licence acquired in carrying on the trade; or
    - (ii) any rights to income under any agreement that is related to or contains such a licence;
  - (b) the individual receives any non-taxable consideration for the disposal (“relevant consideration”); and
  - (c) he has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a licence-related loss sustained in the trade in a qualifying year (“a relevant claim”).
- (2) A “licence-related loss” means a loss that derives to any extent from expenditure incurred in the trade in exploiting the licence.
- (3) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.
- (4) A “qualifying year” means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

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- (a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment; and
  - (b) a year of assessment in which he did not devote a significant amount of time to the trade (within the meaning given by section 130).
- (5) The reference in subsection (1)(b) to “non-taxable” consideration is to consideration—
- (a) that (apart from section 127) is not chargeable to income tax; and
  - (b) whose receipt is not an exit event for the purposes of section 119;
- and it is immaterial for the purposes of subsection (1)(b) whether the non-taxable consideration is the only consideration received by the individual for the disposal.
- (6) For the purposes of this section and sections 127 to 129, an agreement is related to a licence if they are entered into in pursuance of the same arrangement (regardless of the date on which either is entered into).
- (7) For the purposes of this section and sections 127 to 129 an agreement, or part of an agreement, that imposes an obligation to do a thing (rather than merely conferring authority to do it) is not for that reason to be regarded as not being a licence; and references to “exploiting” a licence shall be construed accordingly.

## 127 Charge to income tax

- (1) A chargeable event occurs whenever, on or after 10 February 2004, an individual who carries on or has carried on a trade in partnership—
- (a) receives relevant consideration, if by the time he has received it he has (at any time) made a relevant claim; or
  - (b) makes a relevant claim, if by the time he has made it he has received relevant consideration.
- (2) Where, as respects an individual, one or more chargeable events occurs in a year of assessment in relation to a licence (“the licence in question”)<sup>F22</sup>—
- (a) the individual shall be treated as receiving in that year of assessment an amount of income equal to so much of the total consideration as does not exceed the chargeable amount;
  - (b) that income (which shall not be treated as profits of the trade) shall be chargeable to income tax for that year of assessment; and
  - (c) the individual shall be liable for any tax so chargeable.]
- (3) The “total consideration” means the total amount or value of the relevant consideration that by the end of that year of assessment has been received by the individual (whether or not in that year of assessment).
- (4) To find the chargeable amount—
- (a) take so much of the total consideration as does not exceed the net-licence related loss; and
  - (b) reduce the amount found under paragraph (a) (but not below nil) by the amount of any relevant consideration that by reason of this section has been treated as annual profits or gains of previous years of assessment.
- (5) The net licence-related loss is the amount, computed as at the end of the year of assessment in which the chargeable event occurs, by which A exceeds B, where—
- A is the total of the individual’s claimed licence-related losses for qualifying years; and

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B is the total of his licence-related profits for any years of assessment.

- (6) In subsections (3) and (4), the references to relevant consideration are to relevant consideration received on or after 10 February 2004 and relating to the licence in question (and where relevant consideration is received for a disposal of rights to income under any agreement related to or containing a licence, the consideration shall be regarded for the purposes of this section as relating to the licence).
- (7) In this section “relevant consideration”, “relevant claim” and “qualifying year” have the meanings given by section 126.

#### Textual Amendments

- F22** S. 127(2)(a)-(c) substituted for s. 127(2)(a)(b) and words (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 642](#) (with [Sch. 2](#))

### 128 Definitions for purposes of section 127

- (1) This section applies for the purposes of section 127(5).
- (2) The individual’s “claimed licence-related loss” for a qualifying year is so much of the loss (if any) sustained by him in the trade in that year as derives from expenditure incurred in the trade in exploiting the licence in question and is loss—
- (a) in respect of which he has claimed relief under section 380 or 381 of the Taxes Act 1988; or
  - (b) that he has claimed as an allowable loss under section 72 of the Finance Act 1991 (c. 31).
- (3) For the purposes of subsection (2) the part of a loss that falls within that subsection shall be determined on such basis as is just and reasonable.
- (4) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.
- (5) As respects any year of assessment, the individual’s “licence-related profit” is such part of his profit (if any) from the trade for that year of assessment as derives from income arising from any agreement that is related to or contains the licence in question.
- (6) The part of a profit that derives from such income shall be determined on such basis as is just and reasonable.

### 129 Disposals to which section 126 applies

- (1) The reference in section 126(1)(a) to a disposal of such a licence or rights as are there mentioned includes, in particular—
- (a) the revocation of the licence;
  - (b) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right under the licence;
  - (c) any disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) under an agreement that is related to or contains the licence (“a licence-related agreement”);



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- (d) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right under a licence-related agreement;
  - (e) a change in the individual's entitlement to any profits deriving to any extent from such income, such that his share of the profits is reduced or extinguished;
  - (f) a change in the individual's entitlement to any losses deriving to any extent from expenditure incurred in exploiting the licence, such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;
  - (g) the disposal, giving up or loss of the individual's interest in a partnership that has the licence or a right to income under a licence-related agreement, including the dissolution of the partnership.
- (2) It is immaterial for the purposes of section 126(1)(a) and subsection (1)(b) and (c) whether the licence or right is disposed of alone or as part of a larger disposal (and the references here to disposal of a right include giving up or loss).
- (3) If there is an agreement under which the individual is entitled—
- (a) to a particular share of any profits or losses arising in a period, and
  - (b) to a different share of any profits or losses arising in a succeeding period (“the later period”),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(e) and (f) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a “share” of profits or losses includes a nil share.

### 130 “A significant amount of time”

- (1) For the purposes of section 126(4)(b) the individual shall be treated as having “devoted a significant amount of time to the trade” in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.
- (2) “The relevant period” means the basis period for the year of assessment in question, except that—
- (a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, “the relevant period” means six months beginning with that date; and
  - (b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, “the relevant period” means six months ending with that date.
- (3) In this section “basis period” means (subject to subsection (4)) the basis period given by [<sup>F23</sup>Chapter 15 of Part 2 of the Income Tax (Trading and Other Income) Act 2005 as applied by section 853 of that Act.]
- (4) The basis period for a year of assessment to which [<sup>F24</sup>section 199(1)] of that Act applies is to be taken for the purposes of this section to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

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### Textual Amendments

- F23** Words in s. 130(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 643\(2\)](#) (with [Sch. 2](#))
- F24** Words in s. 130(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 643\(3\)](#) (with [Sch. 2](#))

## *Companies in partnership*

### 131 Companies in partnership

- (1) This section applies if—
- (a) on or after 17 March 2004, a company that is or has been a member of a partnership—
    - (i) directly or indirectly draws out or receives back any capital from the partnership; or
    - (ii) receives consideration for a disposal on or after 17 March 2004 of all or any of its interest in the partnership;
  - (b) as at the relevant time, the sum of—
    - (i) the total amount of any relevant withdrawals, and
    - (ii) the total amount or value of any relevant consideration,
 exceeds the company’s contribution to the partnership;
  - (c) that excess (or any part of it) results directly or indirectly from an arrangement under which any relevant profit was shared in such a way that the company was not allocated all or part of its due share of the profit; and
  - (d) if the company’s due shares of relevant profits had been allocated to the company, some or all of them would have been chargeable to corporation tax.
- (2) For the purposes of this section—
- (a) “the relevant time” means the time immediately after the capital is drawn out or received back or (as the case may be) the consideration is received;
  - (b) a “relevant withdrawal” means any capital that the company has, directly or indirectly, drawn out or received back from the partnership at any time on or after 17 March 2004;
  - (c) “relevant consideration” means consideration received by the company at any time on or after 17 March 2004 for the disposal on or after that date of all or any of its interest in the partnership;
  - (d) “the company’s contribution to the partnership” means the sum of—
    - (i) the amount that it has contributed to the partnership as capital (excluding any amount originally contributed by a person from whom the company acquired an interest in the partnership); and
    - (ii) any amount paid by the company to such a person for such an interest;
  - (e) a “relevant profit” is the profit of the partnership computed for any period, but does not include any profit, or any part of a profit, that derives from income arising before 17th March 2004;
  - (f) the company’s “due share” of any relevant profit is the share of the profit that the company would have been allocated if it had been allocated a share

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calculated by reference to the percentage of the total capital contributed (as defined by subsection (3)) that was contributed by it.

- (3) To find “the total capital contributed” for the purposes of subsection (2)(f)—
  - (a) find, as respects the end of each day in the period for which the profit was computed, the total amount of capital that as at that time had been contributed to the partnership and had not been drawn out or received back;
  - (b) aggregate those amounts; and
  - (c) divide by the number of days in that period.
- (4) Where this section applies, the company shall be treated as receiving, at the relevant time, annual profits or gains which are of an amount equal to the chargeable amount and chargeable to tax under Case VI of Schedule D.
- (5) The chargeable amount is (subject to subsections (8) and (9)) so much of A as does not exceed B, where—
 

A is the amount by which, at the relevant time, the sum of the total amount of any relevant withdrawals and the total amount or value of any relevant consideration exceeds the company’s contribution to the partnership; and

B is the amount by which, at the relevant time, the total amount of the company’s due shares of relevant profits exceeds the total amount of the shares of relevant profits that were actually allocated to the company.
- (6) If any non-income amount is taken into account in computing a relevant profit, then for the purposes of subsection (5) the amount of the company’s due share of the relevant profit and the amount of the share of the relevant profit that was actually allocated to the company shall be taken to be what they would have been if all non-income amounts had been left out of account in computing the relevant profit.
- (7) In subsection (6) a “non-income amount” means an amount that for the purposes of corporation tax would not be taken into account as income or in computing income.
- (8) Subsection (9) applies if this section applies on more than one occasion in relation to the same company and partnership (whether because of two or more receipts by the company of consideration relating to the same disposal or for any other reason).
- (9) On each occasion after the first, the amount found under subsection (5) shall be reduced (but not below nil) by the total of the chargeable amounts found (under that subsection read with this) on the previous occasions.

## 132 Companies in partnership: supplementary

- (1) In section 131 and this section “capital” includes—
  - (a) anything accounted for as partners' capital, or partners' equity, in the accounts of the partnership drawn up in accordance with generally accepted accountancy practice; or
  - (b) if no such accounts are drawn up, anything that would be so accounted for if such accounts had been drawn up.
- (2) Where a partnership is dissolved by reason of one of the partners acquiring the interests of the others, the remaining partner is to be treated for the purposes of section 131 as having drawn out his and the others' shares of capital from the partnership.

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- (3) For the purposes of section 131(2)(e), where a profit for a period derives partly from income arising before 17th March 2004, the part of the profit that derives from such income shall be determined on such basis as is just and reasonable.
- (4) For the purposes of section 131(2)(f) the capital contributed by the company shall be taken to include amounts originally contributed as mentioned in section 131(2)(d)(i).
- (5) In section 131(3) the reference to capital that had been contributed includes amounts purporting to be provided by way of loan where the loan—
  - (a) carries no interest; or
  - (b) carries interest at a rate less than that which might have been expected if the loan had been between independent persons dealing at arm's length.
- (6) For the purposes of section 131 a partnership is to be treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after it.

### **133 Relationship with chargeable gains**

- (1) Subsection (3) below applies if—
  - (a) section 131 applies as a result of a receipt on or after 17 March 2004, by a company that is or has been a member of a partnership, of any consideration for a disposal on or after that date of all or any of its interest in the partnership (“the section 131 disposal”);
  - (b) a chargeable gain accrues to the company on a relevant disposal; and
  - (c) the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of any allowable losses accruing to it on such disposals.
- (2) References in this section to a “relevant disposal” are to any disposal of an asset that, alone or together with other disposals of assets, constitutes the section 131 disposal; and references in this subsection to a disposal of an asset are to be construed in accordance with the 1992 Act.
- (3) Where this subsection applies—
  - (a) any chargeable gain accruing to the company on a relevant disposal must be excluded in computing, for the purposes of section 8(1) of the 1992 Act, the total amount of chargeable gains accruing to the company in the accounting period in which that gain accrued;
  - (b) the relevant net gain (defined by subsection (4) below) must be included in computing for those purposes the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred; and
  - (c) any allowable loss accruing to the company on a relevant disposal must be excluded in computing for the purposes of section 8(1) of the 1992 Act the amount of any allowable losses.
- (4) To find “the relevant net gain” for the purposes of this section—
  - (a) take the amount by which the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of allowable losses accruing to it on such disposals; and
  - (b) reduce it (but not below nil) by an amount equal to the chargeable amount.

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- (5) Where section 131 applies as mentioned in subsection (1)(a) above, in computing any chargeable gain or allowable loss accruing to the company on a relevant disposal—
- (a) neither the chargeable amount, nor any amount taken into account in computing it, shall be excluded by section 37(1) of the 1992 Act (exclusions from consideration); and
  - (b) an amount that has been taken into account in computing the chargeable amount shall not by reason of that fact be excluded by section 39(1) of that Act (exclusions from allowable deductions).
- (6) If section 131 and this section apply more than once as a result of two or more receipts by a company of consideration relating to the same section 131 disposal—
- (a) subsection (3)(b) above does not apply in relation to any of the receipts after the first; and
  - (b) in relation to the first receipt, the amount to be deducted under subsection (4)(b) above is an amount equal to the total of the chargeable amounts found in relation to the receipts.
- (7) Subsection (8) below applies if subsection (3) above prevents an allowable loss that accrued to a company otherwise than on a relevant disposal from being deductible from a chargeable gain accruing to the company on a relevant disposal.
- (8) That loss (to the extent that it has not been deducted from any other chargeable gain) shall instead be deductible from the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred.
- (9) But if, in any case where subsection (3) above applies, there are one or more allowable losses—
- (a) that are losses to which section 18(3) of the 1992 Act applies, and
  - (b) that accrued to the company otherwise than on a relevant disposal and are prevented by subsection (3) above from being deductible from a chargeable gain accruing to the company on a relevant disposal,
- the total amount deducted under subsection (8) above in respect of those losses must not exceed the relevant net gain.
- (10) In this section—
- “the 1992 Act” means the Taxation of Chargeable Gains Act 1992 (c. 12);
  - “the chargeable amount” means the amount found under section 131 in relation to the receipt mentioned in subsection (1) above; and
- references to chargeable gains, or allowable losses, accruing on disposals are to be construed in accordance with the 1992 Act.

## CHAPTER 10

### AVOIDANCE: MISCELLANEOUS

#### 134 Finance leasebacks

- (1) After section 228 of the Capital Allowances Act 2001 (c. 2) (sale and leaseback: election) insert—

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*“Finance leaseback: parties' income and profits*

**228A Application of sections 228B to 228E**

- (1) Sections 228B to 228E apply where—
  - (a) plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and
  - (b) section 222 (restriction of disposal value) applies.
- (2) Sections 228B to 228D also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

**228B Lessee's income or profits: deductions**

- (1) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.
- (2) The permitted maximum is the total of—
  - (a) finance charges shown in the accounts, and
  - (b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.
- (3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).
- (4) The calculation is—

$$\text{Current Book Value} \times \frac{\text{Original Consideration}}{\text{Original Book Value}}$$

where—

“Current Book Value” means the net book value of the leased plant or machinery immediately before the termination,

“Original Consideration” means the consideration payable to S for entering into the relevant transaction, and

“Original Book Value” means the net book value of the leased plant or machinery at the beginning of the leaseback.

**228C Lessee's income or profits: termination of leaseback**

- (1) Subsection (2) applies where the leaseback terminates.
- (2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in

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which the termination occurs shall be increased by an amount calculated in accordance with subsection (3).

(3) The calculation is—

$$\text{NetConsideration} \times \frac{\text{CurrentBookValue}}{\text{OriginalBookValue}}$$

where—

“Net Consideration” means—

- (a) the consideration payable to S for entering into the relevant transaction, minus
- (b) the restricted disposal value,

“Current Book Value” means the net book value of the leased plant or machinery immediately before the termination, and

“Original Book Value” means the net book value of the leased plant or machinery at the beginning of the leaseback.

- (4) In this section “relevant qualifying activity” means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.
- (5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.
- (6) In subsection (5), “amounts received by way of refund” includes any amount that would be so received in respect of the lessee’s interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

#### **228D Lessor’s income or profits**

- (1) This section applies in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (2) Where—
  - (a) an amount receivable in respect of the lessor’s interest under the leaseback falls to be taken into account in that calculation, and
  - (b) that amount is reduced by an amount due to the lessee under the leaseback,that reduction shall be disregarded when taking the amount receivable into account.
- (3) The amounts receivable in respect of the lessor’s interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).
- (4) The permitted threshold is the total of—
  - (a) gross earnings, and

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- (b) the allowable proportion of the capital repayment.
- (5) In subsection (4)(a) “gross earnings” means the amount shown in the lessor’s accounts in respect of the lessor’s gross earnings under the leaseback.
- (6) In subsection (4)(b) “allowable proportion of the capital repayment” means the amount obtained by this calculation—

$$\text{Restricted Disposal Value} \times \frac{\text{Investment Reduction}}{\text{Net Investment}}$$

where—

“Investment Reduction For Period” means the amount shown in the lessor’s accounts in respect of the reduction in net investment in the leaseback, and

“Net Investment” means the amount shown in the lessor’s accounts as the lessor’s net investment in the leaseback at the beginning of its term.

- (7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

#### **228E Lessor’s income or profits: termination of leaseback**

- (1) Subsection (2) applies where—
  - (a) the leaseback terminates,
  - (b) the lessor disposes of the plant or machinery, and
  - (c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.
- (2) For the purpose of income tax or corporation tax, in calculating the lessor’s income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

#### **228F Lease and finance leaseback**

- (1) Sections 228B, 228C and 228D apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.
- (2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.
- (3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.
- (4) In determining the permitted threshold for the purposes of section 228D, the allowable proportion of the capital repayment shall be disregarded.
- (5) Plant or machinery is the subject of a lease and finance leaseback if—
  - (a) a person (“S”) leases the plant or machinery to another (“B”),



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- (b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and
  - (c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.
- (6) For the purposes of subsection (5), S leases the plant or machinery to B only if—
- (a) S grants B rights over the plant or machinery,
  - (b) consideration is given for that grant, and
  - (c) S is not required to bring all of that consideration into account under this Part.
- (7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.
- (8) In the application of sections 228B to 228D in relation to a lease and finance leaseback—
- (a) references to the lessee are references to the person referred to as S in this section, and
  - (b) references to the lessor are references to the person referred to as B in this section or, where appropriate, to an assignee of that person.

### **228G Leaseback not accounted for as finance lease in accounts of lessee**

- (1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.
- (2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection “relevant calculation” means the calculation of—
- (a) the permitted maximum for the purposes of section 228B, or
  - (b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.
- (3) Where an amount that falls to be used for the purposes of a relevant calculation—
- (a) cannot be ascertained by reference to the lessee’s accounts because the leaseback is not accounted for as a finance lease in those accounts, but
  - (b) can be ascertained by reference to the connected person’s accounts for one or more periods,
- that amount as ascertained by reference to the connected person’s accounts shall be used for the purposes of the relevant calculation.
- (4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.
- (5) Sections 228B and 228C do not apply in relation to the leaseback.

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- (6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—
- (a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or
  - (b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).
- (7) For the purposes of this section the leaseback is accounted for as a finance lease in a person's accounts if—
- (a) the leaseback falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or
  - (b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

### **228H Sections 228A to 228G: supplementary**

- (1) In sections 228A to 228G—
- “lessee” does not include a person who is lessee by way of an assignment;
  - the “net book value” of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee's accounts, but—
    - (a) also having regard to depreciation up to the time in question, and
    - (b) disregarding any revaluation gains or losses and any impairments;
  - “restricted disposal value” means the disposal value under section 222;
  - “termination” in relation to a leaseback includes (except in section 228E)—
    - (a) the assignment of the lessee's interest,
    - (b) the making of any arrangements (apart from an assignment of the lessee's interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and
    - (c) a variation as a result of which the leaseback ceases to be a finance lease.
- (2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—
- (a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and
  - (b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.
- (3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G

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as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.

- (4) In subsections (2) and (3) “correct accounts” means accounts drawn up in accordance with generally accepted accounting practice.

### **228J Plant or machinery subject to further operating lease**

- (1) This section applies where—
- (a) plant or machinery is the subject of—
    - (i) a sale and finance leaseback, or
    - (ii) a lease and finance leaseback, and
  - (b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—
    - (i) the term of the lease begins on or after 18 May 2004;
    - (ii) S, or a person connected with S, is the lessee under the lease;
    - (iii) the lease is not accounted for as a finance lease in the accounts of the lessee.
- (2) For the purpose of income tax or corporation tax, in calculating the lessee’s income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.
- (3) Subsections (4) and (5) apply in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (4) Where—
- (a) an amount receivable in respect of the lessor’s interest under the operating lease falls to be taken into account in that calculation, and
  - (b) that amount is reduced by an amount due to the lessee under the operating lease,
- that reduction shall be disregarded when taking the amount receivable into account.
- (5) The amounts receivable in respect of the lessor’s interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).
- (6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.
- (7) For the purposes of this section a lease is accounted for as a finance lease in a person’s accounts if—
- (a) the lease falls, under generally accepted accounting practice, to be treated in that person’s accounts as a finance lease or loan, or
  - (b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

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(8) In this section—

“lease and finance leaseback” has the meaning given in section 228F;

“lessee” means the lessee under the operating lease;

“lessor” means the lessor under the operating lease;

“operating lease” means the lease referred to in subsection (1)(b);

“relevant amount” means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback.”.

- (2) In sections 228A to 228J of the Capital Allowances Act 2001 (c. 2) (as inserted by subsection (1) above), a reference to a provision of that Act includes a reference to an equivalent provision of the Capital Allowances Act 1990 (c. 1) (with any necessary modification).
- (3) This section applies to income tax and corporation tax chargeable in relation to periods that end on or after 17 March 2004.
- (4) Schedule 23 contains transitional provision.

### **135 Rent factoring of leases of plant or machinery**

(1) After section 785 of the Taxes Act 1988 insert—

#### **“785A Rent factoring of leases of plant or machinery**

- (1) This section applies in any case where the following conditions are satisfied—
- (a) a person (call him “P”) is entitled to receive rentals under a lease of plant or machinery,
  - (b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,
  - (c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,
  - (d) apart from this section, some or all of the amount or value of the consideration for the transfer (“the relevant portion of the consideration”) would fall to be brought into account neither—
    - (i) as income, nor
    - (ii) as a capital allowances disposal receipt,
 for the purpose of calculating P’s tax liability.
- (2) In any such case, the relevant portion of the consideration—
- (a) shall be treated for tax purposes as income of P,
  - (b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and
  - (c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.
- (3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P’s tax liability.

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- (4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.
  - (5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.
  - (6) In this section—
    - “capital allowances disposal receipt” means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);
    - “lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things;
    - “tax liability” means liability to income tax or corporation tax.”.
- (2) The amendment made by this section has effect where arrangements for the transfer from one person to another of a right to receive rentals are entered into on or after 2nd July 2004.

### **136 Manufactured dividends**

Schedule 24 to this Act (which makes provision in relation to cases where payments are or have been made, or treated as made, which are representative of dividends on shares of companies resident in the United Kingdom) has effect.

### **137 Manufactured payments under arrangements having an unallowable purpose**

- (1) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) after paragraph 7 (irregular manufactured payments) insert—

#### **Manufactured payments under arrangements having an unallowable purpose**

- “7A (1) This paragraph applies in any case where—
- (a) a manufactured payment falls to be made by a company in an accounting period in pursuance of any arrangements (see sub-paragraphs (9) and (10) for definitions), and
  - (b) the arrangements have an unallowable purpose at any time (see sub-paragraphs (3) to (5)).

But this is subject to sub-paragraph (8) below (cases where tax relief is denied apart from this paragraph).

- (2) The company is not entitled, by virtue of anything in this Schedule or any provision of regulations under it, or otherwise, to any relevant tax relief (see sub-paragraph (10)), to the extent that the relief is in respect of, or referable to, the whole or any part of so much of the manufactured payment as, on a just and reasonable apportionment, is attributable to the unallowable purpose.
- (3) Arrangements have an unallowable purpose at any time if at that time the purposes for which the company is a party to—
  - (a) the arrangements,

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- (b) any related transaction (see sub-paragraphs (6) and (7)), or
  - (c) any transaction in pursuance of the arrangements,

include a purpose (“the unallowable purpose”) which is not among the business or other commercial purposes of the company.
- (4) The business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (5) Where one of the purposes for which a company is at any time a party to—
  - (a) any arrangements,
  - (b) any related transaction in the case of any arrangements, or
  - (c) any transaction in pursuance of any arrangements,

is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.
- (6) One or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—
  - (a) the likely effect of the transactions, and
  - (b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.
- (7) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—
  - (a) are not between the same parties, or
  - (b) are not between the parties to the arrangements.
- (8) This paragraph does not apply if, as a result of any of the following provisions—
  - (a) section 75(4)(b) (expenses of management of companies with investment business: unallowable purposes),
  - (b) section 76(4)(d) (expenses of insurance companies: unallowable purposes),
  - (c) paragraph 13 of Schedule 9 to the Finance Act 1996 (loan relationships with unallowable purposes),

the company in question is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the manufactured payment.

The references to sections 75 and 76 are references to those provisions as they have effect in relation to accounting periods beginning on or after 1st April 2004.
- (9) Any reference in this paragraph to a manufactured payment falling to be made by a company includes a reference to a manufactured payment which is deemed by or under any provision of the Tax Acts to be made by a company (and references to a transaction, or to a company being party to a transaction, are to be construed accordingly).

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(10) In this paragraph—

“arrangements” includes schemes, arrangements and understandings of any kind, whether or not legally enforceable, and shall be taken to include any related transactions;

“manufactured payment” means any of the following—

- (a) any manufactured dividend;
- (b) any manufactured interest;
- (c) any manufactured overseas dividend;

“related transaction” shall be construed in accordance with sub-paragraphs (6) and (7) above;

“relevant tax relief” means any of the following—

- (a) any deduction in computing profits or gains for the purposes of corporation tax;
- (b) any deduction against total profits;
- (c) the bringing into account of any debit for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);
- (d) the surrender of an amount by way of group relief;

“tax advantage” has the same meaning as in Chapter 1 of Part 17 (tax avoidance);

“tax avoidance purpose” means any purpose that consists in securing a tax advantage (whether for the company in question or any other person);

and sub-paragraphs (3) to (7) above have effect for the purposes of this paragraph.”.

(2) In section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) before subsection (2) insert—

“(1C) The application of subsection (1) above in relation to a payment made by a dealer is subject to paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose).”.

This amendment has effect on and after the commencement date.

(3) The amendment made by subsection (1) has effect—

- (a) in the case of new arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the commencement date, and
- (b) in the case of old arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the day on which this Act is passed.

(4) But where—

- (a) as a result of old arrangements, any income arose or accrued, or any gain accrued, to a company before the commencement date,
- (b) the income or gain is or was within the charge to corporation tax, and
- (c) a manufactured payment in pursuance of the arrangements is made, or deemed by or under any provision of the Tax Acts to be made, by the company on or after the day on which this Act is passed,

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the amendment made by subsection (1) does not have effect in relation to so much of the manufactured payment as (on such just and reasonable apportionments as may be necessary) represents the income or gain.

- (5) For the purposes of subsection (4)—
- (a) “income” includes any income deemed by or under any provision of the Tax Acts to arise or accrue,
  - (b) “gain” includes any gain deemed by or under any provision of the Tax Acts to accrue.
- (6) In this section—
- “the commencement date” means 2nd July 2004;
  - “new arrangements” means any arrangements other than old arrangements;
  - “old arrangements” means arrangements which were, or some part of which was, entered into or acted upon before the commencement date.
- (7) For the purposes of subsection (6), the cases where arrangements were, or some part of any arrangements was, acted upon before the commencement date are those cases where a transaction in pursuance of the arrangements, or of any part of the arrangements, has taken place before that date.

## <sup>F25</sup> 138 Gilt strips

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### Textual Amendments

**F25** S. 138 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

## 139 Gifts of shares, securities and real property to charities etc

- (1) Section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc) is amended as follows.
- (2) For subsection (4) (the relevant amount) substitute—
- “(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—
- (a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);
  - (b) where the disposal is at an undervalue, the amount by which—
    - (i) the value described in paragraph (a) above, exceeds
    - (ii) the amount or value of the consideration for the disposal,
 or, if there is no such excess, nil.”.

(3) After subsection (8) insert—

“(8A) The value of the net benefit to the charity is—

    - (a) the market value of the qualifying investment, unless subsection (8B) below applies;



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- (b) where that subsection applies, that market value reduced by the aggregate amount of the related liabilities of the charity (see subsections (8E) to (8G)).
  - (8B) This subsection applies in any case where—
    - (a) the charity is, or becomes, subject to an obligation to any person (whether or not the person making the disposal or a person connected with him), and
    - (b) one or more of the conditions in subsection (8C) below is satisfied.
  - (8C) For the purposes of subsection (8B) above—
    - (a) condition 1 is that, taking into account all the circumstances (including, in particular, the difference in the value of the net benefit to the charity if subsection (8B) applies and if it does not), it is reasonable to suppose that the disposal of the qualifying investment to the charity would not have been made in the absence of the obligation;
    - (b) condition 2 is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a related investment (see subsection (8D)).
  - (8D) In subsection (8C) above “related investment” means any of the following—
    - (a) any asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount);
    - (b) any asset derived from, or representing, the qualifying investment whether in whole or in part and whether directly or indirectly;
    - (c) any asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.
  - (8E) For the purposes of this section, the liabilities which are related liabilities in the case of any qualifying investment are the liabilities of the charity under each of the obligations that fall within subsection (8B) above (as read with subsection (8C) above) in relation to that investment.
  - (8F) Where an obligation is contingent and the contingency occurs, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, under the obligation is the amount or value of the liability actually incurred in consequence of the occurrence of the contingency.
  - (8G) Where an obligation is contingent and the contingency does not occur, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, is nil.”.
- (4) In subsection (9) (definitions) insert each of the following definitions at the appropriate place—
- ““obligation” includes a reference to each of the following—
    - (a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;
    - (b) a series of obligations (whether or not between the same parties);”;
  - ““related liabilities” shall be construed in accordance with subsection (8E) above;”;

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““value of the net benefit to the charity” shall be construed in accordance with subsection (8A) above;”.

(5) After subsection (10) (market value) insert—

“(10A) Section 839 (connected persons) applies for the purposes of this section.”.

(6) The amendments made by this section have effect in relation to any disposal to a charity on or after 2nd July 2004, except where the disposal is in performance of a contract entered into before that date and not varied on or after that date.

<sup>F26</sup>**140 Life policies etc.: restriction of corresponding deficiency relief**

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**Textual Amendments**

**F26** S. 140 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

**CHAPTER 11**

MISCELLANEOUS

*Reliefs for business*

**141 Relief for research and development: software and consumable items**

(1) In Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for expenditure on research and development) for paragraph 6 (expenditure on consumable stores) substitute—

**“Expenditure on software or consumable items**

- 6 (1) For the purposes of this Schedule expenditure on software or consumable items means expenditure on—
- (a) computer software, or
  - (b) consumable or transformable materials,
- and references to software or consumable items shall be construed accordingly.
- (2) For the purposes of this Schedule consumable or transformable materials include water, fuel and power.
- (3) Expenditure on software or consumable items is attributable to relevant research and development if the software or consumable items are employed directly in such research and development.
- (4) In the case of software or consumable items partly employed directly in relevant research and development, an appropriate portion of the expenditure on the software or consumable items is treated as attributable to relevant research and development.

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- (5) For the purposes of sub-paragraphs (3) and (4), software or consumable items employed in the provision of services, such as secretarial or administrative services, in support of other activities are not, by virtue of their employment in the provision of those services, to be treated as themselves directly employed in those other activities.”.
- (2) In each of the following enactments (which relate to tax relief for expenditure on research and development)—
- (a) Schedule 20 to the Finance Act 2000 (c. 17) (small or medium-sized enterprises), other than paragraph 6,
  - (b) Schedule 12 to the Finance Act 2002 (c. 23) (large companies, work sub-contracted to, and large company relief for, small or medium-sized enterprises),
  - (c) Schedule 13 to that Act (vaccine research etc),
- for the words “consumable stores”, wherever occurring, substitute “ software or consumable items ”.
- (3) The amendments made by this section to Schedule 12 to the Finance Act 2002 (large companies etc) have effect in relation to expenditure incurred on or after 1st April 2004.
- (4) Except as provided by subsection (5), the amendments made by this section to—
- (a) Schedule 20 to the Finance Act 2000 (small or medium-sized enterprises),
  - (b) Schedule 13 to the Finance Act 2002 (vaccine research etc),
- have effect in relation to expenditure incurred on or after the appointed day.
- (5) The amendment made by subsection (1) (substitution of paragraph 6 of Schedule 20 to the Finance Act 2000), in its application for the purposes of Schedule 12 to the Finance Act 2002 by virtue of the amendments made to that Schedule by subsection (2), has effect in relation to expenditure incurred on or after 1st April 2004.
- (6) In this section “the appointed day” means such day as the Treasury may by order appoint; and different days may be so appointed for different provisions or different purposes.
- (7) The days that may be appointed by an order under subsection (6) include days earlier than the day on which this Act is passed, but not days earlier than 1st April 2004.

#### Commencement Information

**I10** S. 141(1)(2)(a)(c) has effect as specified by [The Finance Act 2004, Section 141 \(Appointed Day\) Order 2005 \(S.I. 2005/123\)](#), [art. 2](#)

## 142 Temporary increase in amount of first-year allowances for small enterprises

- (1) The amount of a first-year allowance under section 44 of the Capital Allowances Act 2001 (c. 2) (expenditure incurred by small or medium-sized enterprises) shall be determined, in the case of expenditure to which this subsection applies, as if the percentage specified in the entry relating to that section in the Table in section 52(3) of that Act were 50%.

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- (2) Subsection (1) applies to expenditure incurred by a small enterprise (within the meaning of section 44 of that Act) in the period of 12 months beginning with—
- (a) 1st April 2004, if the small enterprise is within the charge to corporation tax, or
  - (b) 6th April 2004, if the small enterprise is within the charge to income tax.
- (3) Accordingly, in section 52(3) of the Capital Allowances Act 2001, after the Table insert— “ In the case of expenditure qualifying under section 44, see also section 142 of the Finance Act 2004 (substitution of 50% in the case of expenditure incurred by a small enterprise in 2004-05 or financial year 2004). ”.

<sup>F27</sup> **143 Deduction for expenditure by landlords on energy-saving items**

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**Textual Amendments**

**F27** S. 143 repealed (6.4.2005) by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, s. 883(1), **Sch. 3** (with **Sch. 2**)

**144 Lloyd’s names: conversion to limited liability underwriting**

Schedule 25 to this Act (which makes provision for certain reliefs to be available where a member of Lloyd’s converts to limited liability underwriting) has effect.

*Offshore matters*

**145 Offshore funds**

- (1) The provisions of the Taxes Act 1988 relating to offshore funds are amended in accordance with Schedule 26 to this Act.
- (2) Except as otherwise provided—
- (a) the amendments have effect for account periods (within the meaning of Chapter 5 of Part 17 of that Act) ending on or after the day on which this Act is passed, and
  - (b) regulations made under a power conferred by virtue of any of the amendments may be made so as to have effect in relation to any such account period.

**146 Meaning of “offshore installation”**

Schedule 27 to this Act (which makes amendments relating to the meaning of “offshore installation”) has effect.

*Health*

**147 Immediate needs annuities**

- (1) The Taxes Act 1988 is amended as follows.

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(2) In section 431 (interpretative provisions relating to insurance companies) in subsection (2) (interpretation for purposes of Chapter 1 of Part 12) in the definition of “annuity business”, at the end insert “, other than the business of granting immediate needs annuities (within the meaning of section 580C)”.

<sup>F28</sup>(3) .....

(4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 1st January 2005.

<sup>F29</sup>(5) .....

<sup>F29</sup>(6) .....

#### Textual Amendments

**F28** S. 147(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

**F29** S. 147(5)(6) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

## 148 Corporation tax: health service bodies

At the end of section 519A of the Taxes Act 1988 (health service bodies: exemptions from income and corporation tax) add—

“(3) The Treasury may by order disapply subsection (1)(b) in relation to a specified activity, or class of activity, of an NHS foundation trust.

(4) An order under subsection (3) shall make provision for determining the amount of the profits relating to an activity that are to be charged to corporation tax as a result of the disapplication of subsection (1)(b).

(5) An order under subsection (3) may, in particular—

- (a) make provision for disregarding profits of less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period;
- (b) make provision for disregarding a specified part of profits in respect of a financial year or accounting period or a specified part of a financial year or accounting period;
- (c) make provision for disregarding all or part of profits relating to activity in respect of which receipts or turnover (as defined by the order) are less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period.

(6) An order under subsection (3)—

- (a) may apply, with or without modification, a provision of the Tax Acts,
- (b) may disapply a provision of the Tax Acts,
- (c) may make provision similar to a provision of the Tax Acts, and
- (d) may make provision generally or in relation to a specified body or class of bodies.

(7) The Treasury may make an order under subsection (3) only—

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- (a) in relation to an activity or class of activity that appears to the Treasury to be of a commercial nature,
  - (b) where it appears to the Treasury to be expedient for the purpose of avoiding, removing or reducing differences between—
    - (i) the fiscal treatment of the body undertaking the activity, and
    - (ii) the fiscal treatment of another body or class of body which is of a commercial nature and which undertakes or might undertake the same or a similar activity, and
  - (c) if a draft has been laid before, and approved by resolution of, the House of Commons.
- (8) An activity authorised under section 14(1) of the Health and Social Care (Community Health and Standards) Act 2003 shall not be treated as an activity of a commercial nature for the purposes of subsection (7)(a).”.

## PART 4

### PENSION SCHEMES ETC

#### CHAPTER 1

##### INTRODUCTION

###### *Introductory*

### 149 Overview of Part 4

- (1) This Part contains tax provision about pension schemes and other similar schemes.
- (2) This Chapter defines some basic concepts.
- (3) As for the rest of this Part—
  - Chapter 2 is about the registration and de-registration of pension schemes,
  - Chapter 3 is about the payments that may be made by registered pension schemes and related matters,
  - Chapter 4 deals with tax reliefs and exemptions in connection with registered pension schemes,
  - Chapter 5 imposes tax charges in connection with registered pension schemes,
  - Chapter 6 is about some schemes that are not registered pension schemes,
  - Chapter 7 makes provision about compliance, and
  - Chapter 8 contains interpretation and other supplementary provisions.

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### *Main concepts*

#### **150 Meaning of “pension scheme”**

- (1) In this Part “pension scheme” means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of persons—
  - (a) on retirement,
  - (b) on death,
  - (c) on having reached a particular age,
  - (d) on the onset of serious ill-health or incapacity, or
  - (e) in similar circumstances.
- (2) A pension scheme is a registered pension scheme for the purposes of this Part at any time if it is at that time registered under Chapter 2.
- (3) In this Part “public service pension scheme” means a pension scheme—
  - (a) established by or under any enactment,
  - (b) approved by a relevant governmental or Parliamentary person or body, or
  - (c) specified in an order made by the Treasury.
- (4) In subsection (3) “a relevant governmental or Parliamentary person or body” means—
  - (a) a Minister of the Crown or a government department,
  - (b) the Scottish Parliament, the Scottish Parliamentary Corporate Body or a member of the Scottish Executive,
  - (c) the National Assembly for Wales, or
  - (d) the Northern Ireland Assembly, the Northern Ireland Assembly Commission, a Northern Ireland Minister, the head of a Northern Ireland department or a Northern Ireland department.
- (5) In this Part “occupational pension scheme” means a pension scheme established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the employees of—
  - (a) that employer or those employers, or
  - (b) any other employer,(whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons).
- (6) In this Part “sponsoring employer”, in relation to an occupational pension scheme, means the employer, or any of the employers, to or in respect of any or all of whose employees the pension scheme has, or is capable of having, effect so as to provide benefits.
- (7) In this Part “overseas pension scheme” means a pension scheme (other than a registered pension scheme) which—
  - (a) is established in a country or territory outside the United Kingdom, and
  - (b) satisfies any requirements prescribed for the purposes of this subsection by regulations made by the Board of Inland Revenue.
- (8) In this Part “recognised overseas pension scheme” means an overseas pension scheme which—

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- (a) is established in a country or territory prescribed, or of a description prescribed, for the purposes of this subsection by regulations made by the Board of Inland Revenue, or
- (b) satisfies any requirements so prescribed.

### **151 Meaning of “member”**

- (1) In this Part “member” in relation to a pension scheme, means any active member, pensioner member, deferred member or pension credit member of the pension scheme.
- (2) For the purposes of this Part a person is an active member of a pension scheme if there are presently arrangements made under the pension scheme for the accrual of benefits to or in respect of the person.
- (3) For the purposes of this Part a person is a pensioner member of a pension scheme if the person is entitled to the present payment of benefits under the pension scheme and is not an active member.
- (4) A person is a deferred member of a pension scheme if the person has accrued rights under the pension scheme and is neither an active member nor a pensioner member.
- (5) A person is a pension credit member of a pension scheme if the person has rights under the pension scheme which are attributable (directly or indirectly) to pension credits.

### **152 Meaning of “arrangement”**

- (1) In this Part “arrangement”, in relation to a member of a pension scheme, means an arrangement relating to the member under the pension scheme.
- (2) For the purposes of this Part an arrangement is a “money purchase arrangement” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits or other money purchase benefits.
- (3) For the purposes of this Part a money purchase arrangement is a “cash balance arrangement” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits.
- (4) In this Part “money purchase benefits”, in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made under the pension scheme by the member or any other person in respect of the member or any other factor).
- (5) In this Part “cash balance benefits” means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member calculated otherwise than wholly by reference to payments made under the arrangement by the member or by any other person in respect of the member (or transfers or other credits).
- (6) For the purposes of this Part an arrangement is a “defined benefits arrangement” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are defined benefits.



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- (7) In this Part “defined benefits”, in relation to a member of a pension scheme, means benefits which are not money purchase benefits (but which are calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision).
- (8) For the purposes of this Part an arrangement is a “hybrid arrangement” at any time if, at that time, all of the benefits that may be provided to or in respect of the member under the arrangement are, depending on the circumstances, to be of one of any two or three of the following varieties—
- (a) cash balance benefits,
  - (b) other money purchase benefits, and
  - (c) defined benefits.
- (9) Where not all of the benefits that may be provided under an arrangement to or in respect of the member are of the same one of those varieties of benefits, the arrangement is to be treated for the purposes of this Part as being two or three separate arrangements one of which relates to each of the two or three varieties of benefits that may be so provided.

## CHAPTER 2

### REGISTRATION OF PENSION SCHEMES

#### *Registration*

#### **153 Registration of pension schemes**

- (1) An application may be made to the Inland Revenue for a pension scheme to be registered.
- (2) The application—
- (a) must contain any information which is reasonably required by the Inland Revenue in any form specified by the Board of Inland Revenue, and
  - (b) must be accompanied by a declaration that the application is made by the scheme administrator (see section 270) and any other declarations by the scheme administrator which are reasonably required by the Inland Revenue.
- (3) The declarations which the Inland Revenue may require to accompany an application for the registration of a pension scheme include, in particular, a declaration that the instruments or agreements by which it is constituted do not entitle any person to unauthorised payments (see section 160(5)).
- (4) On receipt of an application for a pension scheme to be registered the Inland Revenue must decide whether or not to register the pension scheme.
- (5) The Inland Revenue’s decision must be to register the pension scheme unless it appears that—
- (a) any information contained in the application is incorrect, or
  - (b) any declaration accompanying it is false.
- (6) The Inland Revenue must notify the scheme administrator of the decision on the application.

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- (7) Unless the Inland Revenue's decision is not to register the pension scheme, the notification must state the day on and after which the pension scheme will be a registered pension scheme.
- (8) An annuity contract—
  - (a) by means of which benefits under a registered pension scheme have been secured, but
  - (b) which does not provide for the immediate payment of benefits,
 is to be treated as having become a registered pension scheme on the day on which it is made.
- (9) Schedule 36 contains (in Part 1) provisions treating certain pension schemes in existence immediately before 6th April 2006 as registered pension schemes (and related provisions).

#### **154 Persons by whom registered pension scheme may be established**

- (1) An application to register a pension scheme may be made only if the pension scheme is an occupational pension scheme or has been established by—
  - (a) an insurance company (see section 275),
  - (b) a unit trust scheme manager,
  - (c) an operator, trustee or depositary of a recognised EEA collective investment scheme,
  - (d) an authorised open-ended investment company,
  - (e) a building society,
  - (f) a bank, or
  - (g) an EEA investment portfolio manager.
- (2) But subsection (1) does not apply to a public service pension scheme.
- (3) Section 155 defines terms used in subsection (1)(b) to (g).
- (4) The Treasury may by order amend this section and section 155.

#### **155 Persons by whom scheme may be established: supplementary**

- (1) This section has effect for defining terms used in section 154(1)(b) to (g).
- (2) “Unit trust scheme manager” means—
  - (a) a person who has permission under Part 4 of FISMA 2000 to manage unit trust schemes authorised under section 243 of FISMA 2000, or
  - (b) a firm which has permission under paragraph 4 of Schedule 4 to FISMA 2000 (as a result of qualifying for authorisation under paragraph 2 of that Schedule: Treaty firms) to manage unit trust schemes authorised under that section.
- (3) “Recognised EEA collective investment scheme” means a collective investment scheme (within the meaning given by section 235 of FISMA 2000) which is recognised by virtue of section 264 of FISMA 2000 (schemes constituted in other EEA States).
- (4) “Authorised open-ended investment company” has the meaning given by section 237(3) of FISMA 2000.

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- (5) “Building society” means a building society within the Building Societies Act 1986 (c. 53).
- (6) “Bank” means—
- (a) a person falling within section 840A(1)(b) of ICTA (persons, other than building societies etc. permitted to accept deposits), or
  - (b) a body corporate which is a subsidiary or holding company of a person falling within section 840A(1)(b) of ICTA or is a subsidiary of the holding company of such a person.

In paragraph (b) “subsidiary” and “holding company” are to be read in accordance with section 736 of the Companies Act 1985 (c. 6) or Article 4 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

- (7) “EEA investment portfolio manager” means an institution which—
- (a) is an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to FISMA 2000 (certain credit and financial institutions),
  - (b) qualifies for authorisation under paragraph 12(1) or (2) of that Schedule, and
  - (c) has permission under FISMA 2000 to manage portfolios of investments.

## **156 Appeal against decision not to register**

- (1) This section applies where, on an application for a pension scheme to be registered, the Inland Revenue’s decision is not to register the pension scheme.
- (2) The scheme administrator may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the scheme administrator may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the scheme administrator was notified of the decision.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the pension scheme ought to have been registered by the Inland Revenue.
- (7) If they decide that the pension scheme ought not to have been registered by the Inland Revenue, they must dismiss the appeal.
- (8) If they decide that the pension scheme ought to have been registered by the Inland Revenue, the pension scheme is to be treated as having been registered on such date as the Commissioners determine (but subject to any further appeal or any determination on, or in consequence of, a case stated).

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### *De-registration*

#### **157 De-registration**

- (1) The Inland Revenue may withdraw the registration of a pension scheme.
- (2) If the Inland Revenue withdraws the registration of a pension scheme the Inland Revenue must notify the scheme administrator.
- (3) If there is no-one who is the scheme administrator, the Inland Revenue must instead notify any person or persons—
  - (a) who has or have responsibility for the discharge of any obligation relating to the pension scheme under section 271(4) (continuation of liability where no scheme administrator), section 272 (trustees etc.) or section 273 (members), and
  - (b) whom it is reasonably practicable for the Inland Revenue to identify.
- (4) The notification must state the date on and after which the pension scheme will not be a registered pension scheme.

#### **158 Grounds for de-registration**

- (1) The registration of a pension scheme may be withdrawn under section 157 only if it appears to the Inland Revenue—
  - (a) that the amount of the scheme chargeable payments (see section 241) made by the pension scheme during any period of 12 months exceeds the de-registration threshold,
  - (b) that the scheme administrator fails to pay a substantial amount of tax (or interest on tax) due from the scheme administrator by virtue of this Part,
  - (c) that the scheme administrator fails to provide information required to be provided to the Inland Revenue by virtue of this Part and the failure is significant,
  - (d) that any information contained in the application to register the pension scheme or otherwise provided to the Inland Revenue is incorrect in a material particular,
  - (e) that any declaration accompanying that application or the provision of other information to the Inland Revenue is false in a material particular, or
  - (f) that there is no scheme administrator.
- (2) The amount of the scheme chargeable payments made by a pension scheme during any period of 12 months exceeds the de-registration threshold if the scheme chargeable payments percentage is 25% or more.
- (3) The scheme chargeable payments percentage is—
  - (a) if only one scheme chargeable payment is made during the period of 12 months, the percentage of the pension fund used up on the occasion of that scheme chargeable payment, and
  - (b) if two or more scheme chargeable payments are made during the period of 12 months, the aggregate of the percentages of the pension fund used up on the occasion of each of those scheme chargeable payments.
- (4) The percentage of the pension fund used up on the occasion of a scheme chargeable payment is—

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$$\frac{\text{SCP}}{\text{AA}} \times 100$$

where—

SCP is the amount of the scheme chargeable payment, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the scheme chargeable payment is made.

- (5) A failure by a scheme administrator to provide information required to be provided to the Inland Revenue by or under this Part is significant if—
- (a) the amount of information which the scheme administrator fails to provide is substantial, or
  - (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

### **159 Appeal against decision to de-register**

- (1) This section applies where the Inland Revenue decides to withdraw the registration of a pension scheme under section 157.
- (2) The scheme administrator, or any person notified under that section of the withdrawal of registration, may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the appellant was notified of the decision.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the registration of the pension scheme ought to have been withdrawn.
- (7) If they decide that the registration of the pension scheme ought to have been withdrawn, they must dismiss the appeal.
- (8) If they decide that the registration of the pension scheme ought not to have been withdrawn, the pension scheme is to be treated as having remained a registered pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).

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## CHAPTER 3

### PAYMENTS BY REGISTERED PENSION SCHEMES

VALID FROM 06/04/2006

#### *Introductory*

#### **160 Payments by registered pension schemes**

- (1) The only payments which a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are those specified in section 164.
- (2) In this Part “unauthorised member payment” means—
  - (a) a payment by a registered pension scheme to or in respect of a member of the pension scheme which is not authorised by section 164, and
  - (b) anything which is to be treated as an unauthorised payment to or in respect of a member of the pension scheme under section 172, 173 or 174.
- (3) The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are those specified in section 175.
- (4) In this Part “unauthorised employer payment” means—
  - (a) a payment by a registered pension scheme that is an occupational pension scheme, to or in respect of a sponsoring employer, which is not authorised by section 175, and
  - (b) anything which is to be treated as an unauthorised payment to a sponsoring employer under section 181.
- (5) In this Part “unauthorised payment” means—
  - (a) an unauthorised member payment, or
  - (b) an unauthorised employer payment.
- (6) As well as section 157 (de-registration), the following provisions—
  - (a) section 208 (unauthorised payments charge),
  - (b) section 209 (unauthorised payments surcharge),
  - (c) section 239 (scheme sanction charge), and
  - (d) section 242 (de-registration charge),
 specify consequences of making unauthorised payments.
- (7) Sections 182 to 185 contain provision about amounts that a registered pension scheme is not authorised to borrow.
- (8) As well as section 157, sections 239 and 242 specify consequences of unauthorised borrowing.
- (9) Schedule 36 contains (in Parts 3 and 4) transitional provision about unauthorised payments.

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## **161 Meaning of “payment” etc**

- (1) This section applies for the interpretation of this Chapter.
- (2) “Payment” includes a transfer of assets and any other transfer of money’s worth.
- (3) Subsection (4) applies to a payment made or benefit provided under or in connection with an investment (including an insurance contract or annuity) acquired using sums or assets held for the purposes of a registered pension scheme.
- (4) The payment or benefit is to be treated as made or provided from sums or assets held for the purposes of the pension scheme, even if the pension scheme has been wound up since the investment was acquired.
- (5) A payment made by a registered pension scheme to a person who—
  - (a) is connected with a member or sponsoring employer (or was connected with a member at the date of the member’s death), and
  - (b) is not a member or sponsoring employer,is to be treated as made in respect of the member or sponsoring employer.
- (6) Any asset held by a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member’s death) is to be treated as held for the benefit of the member or sponsoring employer.
- (7) Any increase in the value of an asset held by, or reduction in the liability of, a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member’s death) is to be treated as an increase or reduction for the benefit of the member or sponsoring employer.
- (8) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## **162 Meaning of “loan”**

- (1) This section applies for the interpretation of this Chapter.
- (2) “Loan” does not include the purchase of or subscription to debentures, debenture stock, loan stock, bonds, certificates of deposit or other instruments creating or acknowledging indebtedness which are—
  - (a) listed or dealt in on a recognised stock exchange (within the meaning of section 841 of ICTA), or
  - (b) offered to the public.
- (3) A guarantee of a loan made to or in respect of a [<sup>F30</sup>person who is or has been a] member or sponsoring employer of a registered pension scheme [<sup>F31</sup>, or to or in respect of a person who is connected with a [<sup>F30</sup>person who is or has been a] member or sponsoring employer of a registered pension scheme but is not [<sup>F32</sup>such a person].] is to be treated as a loan to or in respect of the [<sup>F30</sup>person who is or has been a] member or sponsoring employer of an amount equal to the amount guaranteed.
- (4) If a [<sup>F33</sup>person who is or has been a] member or sponsoring employer of a registered pension scheme [<sup>F34</sup>or a person who is connected with a [<sup>F33</sup>person who is or has been a] member or sponsoring employer of a registered pension scheme but is not [<sup>F35</sup>such a person]]—
  - (a) is liable to pay a debt, the right to payment of which constitutes an asset held for the purposes of the pension scheme, but

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(b) is not required to pay it by the relevant date, the debt is to be treated as a loan made by the pension scheme to the [<sup>F33</sup>person who is or has been a] member or sponsoring employer on that date.

(5) The relevant date is the date by which a person at arm's length from the pension scheme might be expected to be required to pay the debt.

[<sup>F36</sup>(6) Section 839 of ICTA (connected persons) applies for the purposes of this section.]

#### Textual Amendments

- F30** Words in s. 162(3) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 5(a)**
- F31** Words in s. 162(3) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 6(2)**, 64(1)
- F32** Words in s. 162(3) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 5(b)**
- F33** Words in s. 162(4) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 5(a)**
- F34** Words in s. 162(4) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 6(3)**, 64(1)
- F35** Words in s. 162(4) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 5(b)**
- F36** S. 162(6) inserted (6.4.2006) by Finance Act 2005 (c. 7), **Sch. 10 paras. 6(4)**, 64(1)

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

- C1** Pt. 4 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **12**
- C2** Pt. 4 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **13(5)**
- C3** Pt. 4 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **9, 10**
- C4** Pt. 4 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **26**

#### Commencement Information

- II1** Ss. 160-274, 281, Schs. 30-35 in force at 6.4.2006 but any power to make an order or regulations under those provisions may be exercised at any time after Royal Assent, see s. 284

### 163 Meaning of “borrowing” etc

- (1) This section applies for the interpretation of this Chapter.
- (2) Borrowing is borrowing by a registered pension scheme if the amount borrowed is to be repaid from sums or assets held for the purposes of the pension scheme.
- (3) A liability is a liability of a registered pension scheme if the liability is to be met from sums or assets held for the purposes of the pension scheme.
- (4) Borrowing by a registered pension scheme is in respect of an arrangement if it is properly attributable to the arrangement in accordance with the provisions of the pension scheme and any just and reasonable apportionment.



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### *Authorised member payments*

VALID FROM 06/04/2006

#### **164 Authorised member payments**

The only payments a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are—

- (a) pensions permitted by the pension rules or the pension death benefit rules (see sections 165 and 167),
- (b) lump sums permitted by the lump sum rule or the lump sum death benefit rule (see sections 166 and 168),
- (c) recognised transfers (see section 169),
- (d) scheme administration member payments (see section 171),
- (e) payments pursuant to a pension sharing order or provision, and
- (f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

VALID FROM 06/04/2006

#### **165 Pension rules**

- (1) These are the rules relating to the payment of pensions by a registered pension scheme to a member of the pension scheme (“the pension rules”).

##### *Pension rule 1*

No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.

##### *Pension rule 2*

If the member dies before the end of the period of ten years beginning with the day on which the member became entitled to a scheme pension, an annuity or alternatively secured pension, payment of the scheme pension, annuity or alternatively secured pension may continue to be made (to any person) until the end of that period.

But no other payment of the member’s pension may be made after the member’s death.

##### *Pension rule 3*

No payment of pension other than a scheme pension may be made in respect of a defined benefits arrangement.

##### *Pension rule 4*

If the member has not reached the age of 75, no payment of pension other than—

- (a) a scheme pension,
- (b) a lifetime annuity, or

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(c) unsecured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

*Pension rule 5*

The total amount of unsecured pension paid in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

*Pension rule 6*

If the member has reached the age of 75, no payment of pension other than—

- (a) a scheme pension,
- (b) a lifetime annuity, or
- (c) alternatively secured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

*Pension rule 7*

The total amount of alternatively secured pension paid in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

- (2) In this Part “pension”, in relation to a registered pension scheme, includes—
  - (a) an annuity, and
  - (b) income withdrawal.
- (3) For the purposes of this Part, a person becomes entitled to a pension under a registered pension scheme—
  - (a) in the case of income withdrawal under the pension scheme, whenever sums or assets held for the purposes of an arrangement under the pension scheme are designated as available for the payment of unsecured pension, and
  - (b) in any other case, when the person first acquires an actual (rather than a prospective) right to receive the pension.
- (4) Part 1 of Schedule 28 gives the meaning of expressions used in the pension rules.

VALID FROM 06/04/2006

**166 Lump sum rule**

- (1) This is the rule relating to the payment of lump sums by a registered pension scheme to a member of the pension scheme (“the lump sum rule”).

*Lump sum rule*

No lump sum may be paid other than—

- (a) a pension commencement lump sum,
- (b) a serious ill-health lump sum,

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- (c) a short service refund lump sum,
  - (d) a refund of excess contributions lump sum,
  - (e) a trivial commutation lump sum,
  - (f) a winding-up lump sum, or
  - (g) a lifetime allowance excess lump sum.
- (2) For the purposes of this Part, a person becomes entitled to a lump sum under a registered pension scheme—
- (a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the pension in connection with which it is paid, and
  - (b) in any other case, when the person acquires an actual (rather than a prospective) right to receive the lump sum.
- (3) Part 1 of Schedule 29 gives the meaning of expressions used in the lump sum rule.
- (4) Schedule 36 contains (in Part 3) transitional provisions about lump sums.

VALID FROM 06/04/2006

## 167 Pension death benefit rules

- (1) These are the rules relating to the payment of pension death benefits by a registered pension scheme in respect of a member of the pension scheme (“the pension death benefit rules”).

### *Pension death benefit rule 1*

No payment of pension death benefit may be made otherwise than to a dependant of the member.

### *Pension death benefit rule 2*

No payment of pension death benefit other than a dependants' scheme pension may be made in respect of a defined benefits arrangement.

### *Pension death benefit rule 3*

If a dependant has not reached the age of 75, no payment of pension death benefit to the dependant other than—

- (a) a dependants' scheme pension,
- (b) a dependants' annuity, or
- (c) dependants' unsecured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

### *Pension death benefit rule 4*

The total amount of dependants' unsecured pension paid to a dependant in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

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#### *Pension death benefit rule 5*

If a dependant has reached the age of 75, no payment of pension other than—

- (a) a dependants' scheme pension,
- (b) a dependants' annuity, or
- (c) dependants' alternatively secured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

#### *Pension death benefit rule 6*

The total amount of dependants' alternatively secured pension paid to a dependant in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

- (2) “Pension death benefit” means a pension payable on the death of the member (other than a member’s pension payable after the member’s death under pension rule 2: see section 165).
- (3) Part 2 of Schedule 28 gives the meaning of expressions used in the pension death benefit rules.

VALID FROM 06/04/2006

### **168 Lump sum death benefit rule**

- (1) This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme (“the lump sum death benefit rule”).

#### *Lump sum death benefit rule*

No lump sum death benefit may be paid other than—

- (a) a defined benefits lump sum death benefit,
- (b) a pension protection lump sum death benefit,
- (c) an uncrystallised funds lump sum death benefit,
- (d) an annuity protection lump sum death benefit,
- (e) an unsecured pension fund lump sum death benefit,
- (f) a charity lump sum death benefit,
- (g) a transfer lump sum death benefit,
- (h) a trivial commutation lump sum death benefit, or
- (i) a winding-up lump sum death benefit.

- (2) In this Part “lump sum death benefit” means a lump sum payable on the death of the member.
- (3) Part 2 of Schedule 29 gives the meaning of expressions used in the lump sum death benefit rule.

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(4) Schedule 36 contains (in Part 3) transitional provision about lump sum death benefits.

## 169 Recognised transfers

- (1) A “recognised transfer” is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme so as to become held for the purposes of, or to represent rights under—
  - (a) another registered pension scheme, or
  - (b) a qualifying recognised overseas pension scheme,in connection with a member of that pension scheme.
- (2) For the purposes of this Part a recognised overseas pension scheme is a qualifying recognised overseas pension scheme if—
  - (a) the scheme manager has given to the Inland Revenue notification that it is a recognised overseas pension scheme and has provided any such evidence that it is a recognised overseas pension scheme as the Inland Revenue may require,
  - (b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be a recognised overseas pension scheme,
  - (c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed information requirements imposed on the scheme manager, and
  - (d) the recognised overseas pension scheme is not excluded from being a qualifying recognised overseas pension scheme by subsection (5).
- (3) In this Part “scheme manager”, in relation to a pension scheme, means the person or persons administering, or responsible for the management of, the pension scheme.
- (4) In this section “prescribed information requirements” means—
  - (a) requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information of a description prescribed by regulations so made, and
  - (b) requirements specified by regulations so made to provide information to an authority so specified in circumstances so specified.
- (5) A recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by this subsection if the Inland Revenue has decided that—
  - (a) there has been a failure to comply with any prescribed information requirements imposed on the scheme manager and the failure is significant, and
  - (b) by reason of the failure it is not appropriate that transfers of sums or assets held for the purposes of, or representing accrued rights under, registered pension schemes so as to become held for the purposes of, or to represent rights under, the recognised overseas pension scheme should be recognised transfers,and has notified the person or persons appearing to be the scheme manager of that decision (but subject to subsection (7) and section 170).
- (6) A failure to comply with prescribed information requirements imposed on the scheme manager is significant if—
  - (a) the amount of the information which has not been provided is substantial, or
  - (b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

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(7) The Inland Revenue—

- (a) may at any time after a recognised overseas pension scheme becomes excluded from being a qualifying recognised overseas pension scheme decide that the pension scheme is to cease to be so excluded, and
- (b) must notify the scheme manager of the decision.

VALID FROM 06/04/2006

**170 Appeal against decision to exclude recognised overseas pension scheme**

- (1) This section applies where a recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by a decision of the Inland Revenue under section 169(5).
- (2) The scheme manager may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the scheme manager may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the notification of the decision was given.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme.
- (7) If they decide that the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme, they must dismiss the appeal.
- (8) If they decide that the recognised overseas pension scheme ought not to have been excluded from being a qualifying recognised overseas pension scheme, the recognised overseas pension scheme is to be treated as having remained a qualifying recognised overseas pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).

VALID FROM 06/04/2006

**171 Scheme administration member payments**

- (1) A “scheme administration member payment” is a payment by a registered pension scheme to or in respect of a member of the pension scheme which is made for the purposes of the administration or management of the pension scheme.

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- (2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm's length, the excess is not a scheme administration member payment.
- (3) Scheme administration member payments include in particular—
  - (a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and
  - (b) payments made for the purchase of assets to be held for the purposes of the pension scheme.
- (4) A loan to or in respect of a member of the pension scheme is not a scheme administration member payment.
- (5) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration member payments.

VALID FROM 06/04/2006

### *Unauthorised member payments*

#### **172 Assignment**

- (1) Subsection (2) applies if a member of a registered pension scheme (or the member's personal representatives) assigns or agrees to assign any benefit, other than an excluded pension, to which the member has an actual or prospective entitlement under the pension scheme.
- (2) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives in respect of the member).
- (3) Subsection (4) applies if a person (or a person's personal representatives) assigns or agrees to assign any benefit, other than an excluded pension, to which the person has an actual or prospective entitlement under a registered pension scheme in respect of a member of the pension scheme.
- (4) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the person (or the person's personal representatives) in respect of the member.
- (5) The amount of the unauthorised payment is the greater of—
  - (a) the consideration received in respect of the assignment or agreement, and
  - (b) the consideration which might be expected to be received in respect of the assignment or agreement if the parties to the transaction were at arm's length.
- (6) Where a pension scheme is treated by this section as having made an unauthorised payment in relation to an assignment (or an agreement to assign), payments by the pension scheme of the benefit assigned (or agreed to be assigned) are not unauthorised payments.



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- (7) An excluded pension is a pension which under pension rule 2 may continue to be paid after the member's death (see section 165).
- (8) "Assignment" includes assignation and related expressions are to be read accordingly.

### **173 Benefits**

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a member of the pension scheme if an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to—
  - (a) the member, or
  - (b) a member of the member's family or household.
- (2) If the benefit is received by reason of an employment which is not an excluded employment, subsection (1) does not apply.
- (3) If the benefit is received by reason of an excluded employment, subsection (1) only applies if—
  - (a) it is a benefit to which Chapter 6 or 10 of the benefits code (cars and vans, and benefits not dealt with elsewhere in benefits code) would apply if the employment were not an excluded employment,
  - (b) the pension scheme is an occupational pension scheme, and
  - (c) the member, or a member of the member's family or household, is a director of, and has a material interest in, a sponsoring employer.
- (4) A registered pension scheme is to be treated as having made an unauthorised payment in respect of a member of the pension scheme if, after the member's death, an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to a person who, at the date of the member's death, was a member of the member's family or household.
- (5) The person who receives the benefit is to be treated as having received the unauthorised payment.
- (6) If the benefit is received by reason of an employment which is not an excluded employment, subsections (4) and (5) do not apply.
- (7) If the benefit is received by reason of an excluded employment, subsections (4) and (5) only apply if—
  - (a) paragraphs (a) and (b) of subsection (3) apply, and
  - (b) at the date of the member's death the member, or a member of the member's family or household, was a director of, and had a material interest in, a sponsoring employer.
- (8) The amount of an unauthorised payment treated as having been made by this section—
  - (a) in relation to such benefits, and in such circumstances, as may be prescribed by regulations made by the Board of Inland Revenue, is an amount determined in accordance with the regulations, and
  - (b) otherwise, is the amount which would be the cash equivalent of the benefit under the benefits code if the benefit were received by reason of an employment and the benefits code applied to it.



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- (9) For the purposes of subsection (8)—
- (a) references in the benefits code to the employee are to be treated as references to the member, and
  - (b) references in the benefits code to the employer are to be treated as references to the pension scheme.
- (10) In this section—
- “the benefits code” has the meaning given by section 63(1) of ITEPA 2003,
  - “director” has the meaning given by section 67 of that Act,
  - “excluded employment” has the meaning given by section 63(4) of that Act, and
  - “material interest” has the meaning given by section 68 of that Act.
- (11) Section 721 of ITEPA 2003 applies for the purposes of determining the members of a person’s family or household.

#### **174 Value shifting**

- (1) A registered pension scheme is to be treated as having made an unauthorised payment to a member of the pension scheme if, in connection with any of the events mentioned in subsection (3) or a change in the value of a currency—
- (a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and
  - (b) the value of an asset held by or for the benefit of the member is increased, a liability of the member is reduced, or a liability of another person is reduced for the benefit of the member.
- (2) But if the event or the change in the value of the currency occurs after the member’s death—
- (a) the pension scheme is to be treated as having made an unauthorised payment in respect of the member (rather than to the member), and
  - (b) the person who holds the asset or is subject to the liability in relation to which subsection (1)(b) is satisfied is to be treated as having received the unauthorised payment.
- (3) The events are—
- (a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),
  - (b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),
  - (c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or
  - (d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme,
- in a way which differs from that which might be expected if the parties to the transaction were at arm’s length.

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- (4) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.
- (5) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

VALID FROM 06/04/2006

### *Authorised employer payments*

#### **175 Authorised employer payments**

The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are—

- (a) public service scheme payments (see section 176),
- (b) authorised surplus payments (see section 177),
- (c) compensation payments (see section 178),
- (d) authorised employer loans (see section 179),
- (e) scheme administration employer payments (see section 180), and
- (f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

#### **176 Public service scheme payment**

A payment is a public service scheme payment if—

- (a) it is made by a public service pension scheme, and
- (b) it is not of a description prescribed by regulations made by the Board of Inland Revenue.

#### **177 Authorised surplus payment**

For the purposes of this Part a payment is an authorised surplus payment if it is of a description prescribed by regulations made by the Board of Inland Revenue.

#### **178 Compensation payments**

A payment is a compensation payment if it is made in respect of a member's liability to a sponsoring employer in respect of a criminal, fraudulent or negligent act or omission by the member.

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### **179 Authorised employer loan**

- (1) A loan made to or in respect of a sponsoring employer is an authorised employer loan if—
  - (a) the amount loaned does not exceed an amount equal to 50% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme immediately before the loan is made,
  - (b) the loan is secured by a charge which is of adequate value, and
  - (c) the repayment terms comply with subsection (2).
- (2) The repayment terms comply with this subsection if—
  - (a) the rate of interest payable on the loan is not less than the rate prescribed by regulations made by the Board of Inland Revenue,
  - (b) the loan repayment date is before the end of the period of five years beginning with the date on which the loan is made, or has been postponed to a date after the end of that period under subsection (3), and
  - (c) the amount payable in each period beginning with the date on which the loan is made, and ending with the last day of a loan year, is not less than the required amount.
- (3) If on a standard loan repayment date any amount (including interest) is owing, the loan repayment date may be postponed to a date before the end of the period of five years beginning with the standard loan repayment date.
- (4) The loan repayment date may be postponed under subsection (3) only once.
- (5) If the amount of a loan to or in respect of a sponsoring employer is increased, the amount of the increase is to be treated as a loan made on the date of the increase.
- (6) Schedule 30 gives the meaning of expressions used in this section and explains how to calculate the amount of the unauthorised payment when a loan to or in respect of a sponsoring employer does not comply with subsection (1).
- (7) In this section and that Schedule “charge” includes a right in security or an agreement to create a right in security; and any reference to assets subject to a charge or assets charged includes a reference to the property over which such a right is granted.
- (8) Schedule 36 contains (in Part 4) transitional provision about loans to sponsoring employers.

### **180 Scheme administration employer payments**

- (1) A “scheme administration employer payment” is a payment made—
  - (a) by a registered pension scheme that is an occupational pension scheme, and
  - (b) to or in respect of a sponsoring employer,for the purposes of the administration or management of the pension scheme.
- (2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm’s length, the excess is not a scheme administration employer payment.
- (3) Scheme administration employer payments include in particular—
  - (a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and

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- (b) payments made for the purchase of assets to be held for the purposes of the pension scheme.
- (4) A loan to or in respect of a sponsoring employer is not a scheme administration employer payment.
- (5) Payments made to acquire shares in a sponsoring employer are not scheme administration employer payments if, when the payment is made—
  - (a) the market value of shares in the sponsoring employer held for the purposes of the pension scheme is equal to or greater than 5% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme, or
  - (b) the total market value of shares in sponsoring employers held for the purposes of the pension scheme is equal to or greater than 20% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme.
- (6) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration employer payments.

VALID FROM 06/04/2006

### *Unauthorised employer payments*

#### **181 Value shifting**

- (1) A registered pension scheme that is an occupational pension scheme is to be treated as having made an unauthorised payment to a sponsoring employer if, in connection with any of the events mentioned in subsection (2) or a change in the value of a currency—
  - (a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and
  - (b) the value of an asset held by or for the benefit of the sponsoring employer is increased, a liability of the sponsoring employer is reduced, or a liability of another person is reduced for the benefit of the sponsoring employer.
- (2) The events are—
  - (a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),
  - (b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),
  - (c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or
  - (d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme,

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in a way which differs from that which might be expected if the parties to the transaction were at arm's length.

- (3) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.
- (4) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

VALID FROM 06/04/2006

### *Borrowing*

#### **182 Unauthorised borrowing: money purchase arrangements**

- (1) A registered pension scheme is not authorised to borrow an amount in respect of a money purchase arrangement unless the arrangement borrowing condition is met.
- (2) The arrangement borrowing condition is met if—

$$\left( APB + PB \right) < \frac{VA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed in respect of the arrangement, and

VA is the value of the arrangement.

- (3) The value of the arrangement is the aggregate of—
  - (a) the amount of such of the sums and the market value of such of the assets as represent the member's unsecured pension fund or alternatively secured pension fund in respect of the arrangement (if any),
  - (b) the amount of such of the sums and the market value of such of the assets as represent dependants' unsecured pension funds or alternatively secured pension funds in respect of the arrangement (if any),
  - (c) the aggregate of the value of each scheme pension or dependants' scheme pension payable in respect of the arrangement, and
  - (d) the value of the uncrystallised rights under the arrangement.
- (4) The value of a scheme pension or dependants' scheme pension payable in respect of the arrangement is—

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## RVF × ARP

where—

RVF is the relevant valuation factor (see section 276), and

ARP is the annual rate at which the pension is payable.

- (5) Rights are uncrystallised if no-one has become entitled to the present payment of benefits in respect of the rights; and a person is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the person's unsecured pension fund or alternatively secured pension fund.
- (6) If the arrangement is a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if a person became entitled to benefits in respect of those rights.
- (7) If the arrangement is a money purchase arrangement other than a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the aggregate of the amount of such of the sums, and the market value of such of the assets, held for the purposes of the arrangement as represent those rights.
- (8) If the arrangement is a hybrid arrangement under which either cash balance benefits or other money purchase benefits (but not defined benefits) may be provided, the value of the uncrystallised rights under the arrangement is the greater of—
  - (a) their value calculated under subsection (6) (on the assumption that cash balance benefits are provided), and
  - (b) their value calculated under subsection (7) (on the assumption that other money purchase benefits are provided).

### 183 Effect of unauthorised borrowing: money purchase arrangements

- (1) Subsection (2) applies if a registered pension scheme borrows in respect of a money purchase arrangement an amount which it is not authorised to borrow under section 182.
- (2) The pension scheme is to be treated as having made a scheme chargeable payment—
  - (a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and
  - (b) otherwise, of the amount borrowed.
- (3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{VA}{2}$$

- (4) If subsection (3) applies, the amount of the scheme chargeable payment is—

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$$APB + AB - \frac{VA}{2}$$

(5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

AB is the amount borrowed, and

VA is the value of the arrangement, calculated in accordance with section 182(3), immediately before the amount is borrowed.

#### **184 Unauthorised borrowing: other arrangements**

(1) A registered pension scheme is not authorised to borrow an amount in respect of any arrangement which is not a money purchase arrangement unless the scheme borrowing condition is met.

(2) The scheme borrowing condition is met if—

$$(APB + PB) < \frac{AARA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed by the pension scheme, and

AARA is the aggregate amount of the relevant sums and assets.

(3) The aggregate amount of the relevant sums and assets is the aggregate of—

(a) the amount of the sums held for the purposes of such of the arrangements under the pension scheme as are not money purchase arrangements, and

(b) the market value of the assets held for the purposes of such of the arrangements under the pension scheme as are not money purchase arrangements.

#### **185 Effect of unauthorised borrowing: other arrangements**

(1) Subsection (2) applies if a registered pension scheme borrows, in respect of an arrangement which is not a money purchase arrangement, an amount which it is not authorised to borrow under section 184.

(2) The pension scheme is to be treated as having made a scheme chargeable payment—

(a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and

(b) otherwise, of the amount borrowed.

(3) This subsection applies if, immediately before the amount is borrowed—



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$$APB < \frac{AARA}{2}$$

(4) If subsection (3) applies, the amount of the scheme chargeable payment is—

$$APB + AB - \frac{AARA}{2}$$

(5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),

AB is the amount borrowed, and

AARA is the aggregate amount of the relevant sums and assets, calculated in accordance with section 184(3), immediately before the amount is borrowed.

## CHAPTER 4

### REGISTERED PENSION SCHEMES: TAX RELIEFS AND EXEMPTIONS

VALID FROM 06/04/2006

#### *Scheme investments*

#### **186 Income**

- (1) No liability to income tax arises in respect of—
  - (a) income derived from investments or deposits held for the purposes of a registered pension scheme, or
  - (b) underwriting commissions applied for the purposes of a registered pension scheme which would otherwise be chargeable to tax under Case VI of Schedule D.
- (2) The exemption provided by subsection (1) does not apply to income derived from investments or deposits held as a member of a property investment LLP; and for this purpose “income” includes relevant stock lending fees, in relation to any investments, to which subsection (1) would apply by virtue of section 129B of ICTA (inclusion of relevant stock lending fees in income).
- (3) In this Part “investments”, in relation to a registered pension scheme, includes futures contracts and options contracts; and income derived from transactions relating to futures contracts or options contracts is to be treated as derived from the contracts.
- (4) For that purpose a contract is not prevented from being a futures contract or an options contract by the fact that a party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets) in full settlement of all obligations.



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## 187 Chargeable gains

- (1) Section 271 of TCGA 1992 (exemptions) is amended as follows.
- (2) In paragraph (b) of subsection (1), for the words after “part of” substitute “ the Fund mentioned in section 613(4) of the Taxes Act (House of Commons Members' Fund); ”.
- (3) In subsection (1), omit—
  - (a) paragraph (d) (retirement annuity contracts),
  - (b) paragraph (g) (exempt approved schemes),
  - (c) paragraph (h) (approved personal pension schemes), and
  - (d) paragraph (j) (authorised unit trusts which are also approved personal pension schemes or exempt approved schemes),and the second sentence.
- (4) After that subsection insert—

“(1A) A gain accruing to a person on a disposal of investments held for the purposes of a registered pension scheme is not a chargeable gain.”
- (5) Omit subsection (2) (superannuation funds approved before 6th April 1980).
- (6) In subsection (10)—
  - (a) for “subsections (1)(g) and (h) and (2)” substitute “ subsection (1A) ”, and
  - (b) omit the words after “options contracts”.
- (7) In subsection (12), for “Subsection (1)(b), (c), (d), (g) and (h) and subsection (2)” substitute “ Subsections (1)(b) and (c) and (1A) ”.

### *Members' contributions*

VALID FROM 06/04/2006

## 188 Relief for contributions

- (1) An individual who is an active member of a registered pension scheme is entitled to relief under this section in respect of relievable pension contributions paid during a tax year if the individual is a relevant UK individual for that year.
- (2) In this Part “relievable pension contributions”, in relation to an individual and a pension scheme, means contributions by or on behalf of the individual under the pension scheme other than contributions to which subsection (3) applies.
- (3) This subsection applies to—
  - (a) any contributions paid after the individual has reached the age of 75,
  - (b) any contributions paid by an employer of the individual (as to which see sections 196 to 201), and
  - (c) any amounts paid by the Board of Inland Revenue under section 42A(3) or 43 of the Pension Schemes Act 1993 (c. 48) or section 38A(3) or 39 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (rebates and minimum contributions).

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- (4) For the purposes of this Part a pension credit which increases the rights of the individual under the pension scheme is only to be treated as a contribution on behalf of the individual if it derives from a pension scheme that is not a registered pension scheme.
- (5) For the purposes of this Part—
- (a) any other transfer of any sum held for the purposes of, or representing accrued rights under, a pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme, and
  - (b) any transfer lump sum death benefit,
- is not to be treated as a contribution.
- (6) Any amount recovered by the individual's employer under regulations made under—
- (a) section 8(3) of the Pension Schemes Act 1993 (recovery of minimum payments), or
  - (b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993, (corresponding provision for Northern Ireland),
- in respect of minimum payments made to a registered pension scheme is to be treated for the purposes of this section (and sections 191 to 194) as a contribution paid by the individual under the pension scheme.
- (7) References in the Income Tax Acts to relief in respect of life assurance premiums do not include relief under this section.
- (8) The following sections make further provision about relief under this section—
- section 189 (relevant UK individual),
  - section 190 (annual limit for relief),
  - sections 191 to 194 (methods of giving relief), and
  - section 195 (transfer of certain shares to be treated as payment of contribution).

VALID FROM 06/04/2006

## 189 Relevant UK individual

- (1) For the purposes of this Part an individual is a relevant UK individual for a tax year if—
- (a) the individual has relevant UK earnings chargeable to income tax for that year,
  - (b) the individual is resident in the United Kingdom at some time during that year,
  - (c) the individual was resident in the United Kingdom both at some time during the five tax years immediately before that year and when the individual became a member of the pension scheme, or
  - (d) the individual, or the individual's spouse [<sup>F37</sup>or civil partner], has for the tax year general earnings from overseas Crown employment subject to UK tax.
- (2) In this Part “relevant UK earnings” means—
- (a) employment income,

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- (b) income which is chargeable under Schedule D and is immediately derived from the carrying on or exercise of a trade, profession or vocation (whether individually or as a partner acting personally in a partnership), and
  - (c) income to which section 529 of ICTA (patent income of an individual in respect of inventions) applies.
- (3) For the purposes of this section and section 190 relevant UK earnings are to be treated as not being chargeable to income tax if, in accordance with arrangements having effect by virtue of section 788 of ICTA (double taxation agreements), they are not taxable in the United Kingdom.
- (4) “General earnings from overseas Crown employment subject to UK tax” has the meaning given by section 28 of ITEPA 2003.

#### Textual Amendments

- F37** Words in s. 189(1)(d) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), reg. 1(1), [176](#)

VALID FROM 06/04/2006

#### 190 Annual limit for relief

- (1) The maximum amount of relief to which an individual is entitled under section 188 (relief for contributions) for a tax year is (subject as follows) the amount of the individual’s relevant UK earnings which are chargeable to income tax for the tax year.
- (2) If the amount of the individual’s relevant UK earnings which are chargeable to income tax for the tax year is less than the basic amount, the maximum amount of relief to which the individual is entitled under section 188 for the tax year is increased by the difference between—
- (a) the amount of the individual’s relevant UK earnings which are so chargeable, and
  - (b) the basic amount,
- (so that, if the individual has no relevant UK earnings which are so chargeable, the maximum amount of such relief is the basic amount).
- (3) Subsection (2) is subject to section 191(7) (limit on methods of giving relief to which individual is entitled by virtue of subsection (2)).
- (4) “The basic amount” is £3,600 or such greater amount as the Treasury may by order specify.
- (5) Subsections (1) and (2) do not apply in relation to any amount of relief to which an individual is entitled under section 188 in respect of any amount recovered by the individual’s employer under regulations made under—
- (a) section 8(3) of the Pension Schemes Act 1993 (c. 48) (recovery of minimum payments), or
  - (b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (corresponding provision for Northern Ireland).

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## 191 Methods of giving relief

- (1) Relief to which an individual is entitled under section 188 (relief for contributions) in respect of contributions is to be given as provided by this section.
- (2) Subject as follows, the relief is to be given in accordance with section 192 (relief at source).
- (3) Subject to subsection (7), relief in respect of contributions under a pension scheme made by a member of the pension scheme may (instead of being given in accordance with section 192) be given in accordance with section 193 (relief under net pay arrangements) if—
  - (a) the pension scheme is an occupational pension scheme,
  - (b) the member is an employee of a sponsoring employer, and
  - (c) relief in respect of contributions made under the pension scheme by all of the other members of the pension scheme who are employees of the sponsoring employer is given in accordance with that section.
- (4) Subject to subsection (7), relief in respect of contributions under a pension scheme made by a member of the pension scheme may (instead of being given in accordance with section 192) be given in accordance with section 193 if—
  - (a) the pension scheme is a public service pension scheme or marine pilots' benefits fund, and
  - (b) the member is an employee.
- (5) Subject to subsection (7), subsection (6) applies where—
  - (a) contributions are made under a public service pension scheme or marine pilots' benefit fund by a member who is not an employee, or
  - (b) contributions are made otherwise than by a member of the pension scheme under a net pay pension scheme.
- (6) Relief in respect of the contributions—
  - (a) may (but need not) be given in accordance with section 192, but
  - (b) where not so given, is to be given in accordance with section 194 (relief on making of claim).
- (7) Relief to which an individual is entitled by virtue of section 190(2)—
  - (a) may only be given in accordance with section 192, and
  - (b) is not required to be given in respect of contributions under a net pay pension scheme.
- (8) In this section “marine pilots' benefits fund” means—
  - (a) a fund established under section 15(1)(i) of the Pilotage Act 1983 (c. 21), or
  - (b) any scheme supplementing or replacing such a fund.
- (9) In this Part “net pay pension scheme” means a pension scheme in the case of which some or all of the members of the pension scheme are entitled to be given relief in accordance with section 193 in respect of the payment of contributions by them under the pension scheme.

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(10) Schedule 36 contains (in Part 4) transitional provision about relief in respect of contributions to pre-commencement retirement annuity contracts.

VALID FROM 06/04/2006

## 192 Relief at source

- (1) Where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution under a pension scheme, the individual or other person by whom the contribution is paid is entitled, on making the payment, to deduct and retain out of it a sum equal to income tax on the contribution at the basic rate for the tax year in which the payment is made.
- (2) If a sum is deducted from the payment of the contribution—
  - (a) the scheme administrator must allow the deduction on receipt of the residue,
  - (b) the individual or other person is acquitted and discharged of so much money as is represented by the deduction as if the sum had actually been paid, and
  - (c) the sum deducted is to be treated as income tax paid by the scheme administrator.
- (3) When the payment of the contribution is received—
  - (a) the scheme administrator is entitled to recover from the Board of Inland Revenue the amount which is treated as income tax paid by the scheme administrator in relation to the contribution, and
  - (b) any amount so recovered is to be treated for the purposes of the Tax Acts in the same manner as the payment of the contribution.
- (4) If (apart from this subsection) income tax or capital gains tax at the higher rate is chargeable in respect of any part of the individual's total income or chargeable gains for the tax year, on the making of a claim the basic rate limit for that year in the individual's case is increased by the amount of the contribution.
- (5) For the purposes of sections 257(5)<sup>F38</sup>, 257A(5) and 257AB(4)] of ICTA (age related allowances), the individual's total income for the tax year is to be treated as reduced by the amount of the contribution.
- (6) Subsections (1) and (2) have effect subject to such conditions as the Board of Inland Revenue may prescribe by regulations.
- (7) The Board of Inland Revenue may by regulations make provision for carrying subsections (1) to (3) into effect, in particular by making provision—
  - (a) about how a sum is to be recovered under subsection (3)(a) (including the manner in which a claim for the recovery of a sum is to be made),
  - (b) for the giving of such information, in such form, as may be prescribed by or under the regulations,
  - (c) for the inspection of documents by persons authorised by the Board of Inland Revenue, and
  - (d) specifying the consequences of failure to comply with conditions prescribed by virtue of subsection (6).
- (8) Regulations under this section may, in particular—

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- (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modification).
- (9) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.
- (10) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given—
- (a) in respect of the contribution under any other provision of the Income Tax Acts, or
  - (b) (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

#### Textual Amendments

- F38** Words in s. 192(5) substituted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 177

VALID FROM 06/04/2006

#### 193 Relief under net pay arrangements

- (1) This section applies where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution under a pension scheme.
- (2) The amount of the contribution is to be allowed to be deducted by the sponsoring employer from the employment income from the individual's employment with the employer for the tax year in which the payment is made.
- (3) A deduction may be made only once in respect of the same contribution.
- (4) A claim for excess relief may be made if—
  - (a) the amount of the contributions paid by an individual under one or more relevant net pay pension schemes in a tax year exceeds the employment income from the individual's employment or employments with the sponsoring employer or employers for the tax year, or
  - (b) it is not possible for the sponsoring employer or employers for any other reason to deduct the whole amount of the contribution from the individual's employment income.
- (5) A net pay pension scheme is a relevant net pay pension scheme if the members of the pension scheme entitled to be given relief in accordance with this section in respect of the payment of contributions by them under the pension scheme include the individual.
- (6) On the making of the claim for excess relief the amount of the excess may be deducted from the total income of the individual for the tax year.



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- (7) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.
- (8) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given in respect of it under any other provision of the Income Tax Acts.

VALID FROM 06/04/2006

#### **194 Relief on making of claim**

- (1) Where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution, on the making of a claim the amount of the contribution may be deducted from the total income of the individual for the tax year in which the payment is made.
- (2) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.
- (3) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given—
  - (a) in respect of the contribution under any other provision of the Income Tax Acts, or
  - (b) (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

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#### **195 Transfer of certain shares to be treated as payment of contribution**

- (1) For the purposes of sections 188 to 194 (relief for contributions) references to contributions paid by an individual include contributions made in the form of the transfer by the individual of eligible shares in a company within the permitted period.
- (2) For the purposes of those sections the amount of a contribution made by way of a transfer of shares is the market value of the shares at the date of the transfer.
- (3) “Eligible shares”, in relation to a contribution made by an individual, means shares—
  - (a) which the individual has exercised a right to acquire in accordance with the provisions of an SAYE option scheme, or
  - (b) which have been appropriated to the individual in accordance with the provisions of a share incentive plan.
- (4) “The permitted period”—

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- (a) in relation to shares which the individual has exercised a right to acquire in accordance with the provisions of an SAYE option scheme, is the period of 90 days following the exercise of that right, and
  - (b) in relation to shares which have been appropriated to the individual in accordance with the provisions of a share incentive plan, is the period of 90 days following the date when the individual directed the trustees of the share incentive plan to transfer the ownership of the shares to the individual.
- (5) In this section—
- “SAYE option scheme” has the same meaning as in the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)), and
  - “share incentive plan” has the same meaning as in the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

VALID FROM 06/04/2006

### *Employers' contributions*

#### **196 Relief for employers in respect of contributions paid**

- (1) This section makes provision about an employer’s entitlement to relief in respect of contributions paid by the employer under a registered pension scheme in respect of any individual.
- (2) For the purposes of Case I or II of Schedule D—
  - (a) the contributions are to be treated as not being payments of a capital nature to the extent that they otherwise would be, and
  - (b) if they are allowed to be deducted in computing the amount of the profits of the employer, they are deductible in computing the amount of the profits for the period of account in which they are paid.
- (3) For the purposes of section 75 of ICTA (expenses of management: companies with investment business), the contributions—
  - (a) are to be treated as being expenses of management to the extent that they otherwise would not be, and
  - (b) are referable to the accounting period in which they are paid.
- (4) For the purposes of section 76 of ICTA (expenses of insurance companies), the contributions—
  - (a) are to be brought into account at Step 1 in subsection (7) of that section to the extent that they otherwise would not be, and
  - (b) are referable to the accounting period in which they are paid.
- (5) The references in this section to contributions include minimum payments under—
  - (a) section 8 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),
 other than any part recovered from a member of the pension scheme under regulations made under subsection (3) of either of those sections.



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- (6) This section is subject to sections 197 and 198 (spreading of relief) (and to transitional provision contained in Part 4 of Schedule 36).

## **197 Spreading of relief**

- (1) This section applies where—
- (a) contributions are paid by an employer under a registered pension scheme in two consecutive chargeable periods (“the previous chargeable period” and “the current chargeable period”), and
  - (b) the amount of the contributions paid in the current chargeable period otherwise than for an excepted purpose (“CCCP”) exceeds 210% of the amount of the contributions paid in the previous chargeable period (“CPCP”).
- (2) Relief under section 196 (relief for employers in respect of contributions paid) is to be given in respect of so much of CCCP as exceeds 110% of CPCP (“the amount of the relevant excess contributions”) in accordance with subsections (4) and (5).
- (3) But subsection (2)—
- (a) does not apply if the amount of the relevant excess contributions is less than £500,000, and
  - (b) has effect subject to section 198 (cessation of business).
- (4) A fraction of the whole of the amount of the relevant excess contributions is to be treated for the purposes of section 196 as if it had been paid in the chargeable period, or in each of the two or three chargeable periods, immediately after the current chargeable period (leaving only the remainder to be treated as paid in the current chargeable period).
- (5) The following table specifies (by reference to the amount of the relevant excess contributions)—
- (a) the fraction of the whole of the amount of the relevant excess contributions which is to be treated as paid in the chargeable period, or in each of the two or three chargeable periods, immediately after the current chargeable period, and
  - (b) the chargeable period or periods in which it is to be treated as paid.

<b>AMOUNT OF THE RELEVANT EXCESS CONTRIBUTIONS</b>	<b>FRACTION AND CHARGEABLE PERIOD OR PERIODS</b>
500,000 or more but less than 1,000,000	One-half of the whole of the amount of the relevant excess contributions is to be treated as paid in the chargeable period immediately after the current chargeable period
1,000,000 or more but less than 2,000,000	One-third of the whole of the amount of the relevant excess contributions is to be treated as paid in each of the two chargeable periods immediately after the current chargeable period
2,000,000 or more	One-quarter of the whole of the amount of the relevant excess contributions is

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to be treated as paid in each of the three chargeable periods immediately after the current chargeable period

- (6) Subsection (7) specifies for the purposes of subsection (1) when contributions paid by the employer in the current chargeable period are paid for an excepted purpose.
- (7) They are paid for an excepted purpose if paid with a view to funding—
- (a) an increase in the amount of pensions paid to pensioner members of the pension scheme to reflect increases in the cost of living, or
  - (b) benefits which may accrue under the pension scheme to or in respect of individuals who become members of the pension scheme in the current chargeable period as a result of future service as employees of the employer.
- (8) Where the previous chargeable period and the current chargeable period are not of equal length, this section has effect as if CPCP were the amount it would otherwise be as adjusted by being multiplied by the appropriate factor.
- (9) The appropriate factor is—

$$\frac{\text{DCCP}}{\text{DPCP}}$$

where—

DCCP is the number of days in the current chargeable period, and

DPCP is the number of days in the previous chargeable period.

- (10) In this section “chargeable period” means—
- (a) in a case where the contributions are deducted in computing profits to be charged under Case I or II of Schedule D, a period of account, and
  - (b) in a case where relief in respect of the contributions is given under section 75 or 76 of ICTA (expenses of management: companies with investment business and expenses of insurance companies), an accounting period.

## 198 Spreading of relief: cessation of business

- (1) This section applies if—
- (a) the employer ceases to carry on business in the current chargeable period or a later chargeable period in which section 197(4) would require a fraction of the amount of the relevant excess contributions to be treated as paid, and
  - (b) were section 197(4) to apply, relief in relation to the whole of the amount of the relevant excess contributions would not be given pre-cessation.
- (2) Relief is given pre-cessation if it is given for the chargeable period in which the employer ceases to carry on business or any earlier chargeable period.
- (3) The portion of the amount of the relevant excess contributions in relation to which relief would not have been given pre-cessation (“the unrelieved portion”) is be treated as paid (at the option of the employer) either—
- (a) in the chargeable period in which the employer ceases to carry on business, or
  - (b) as provided by subsection (4).

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- (4) This subsection provides that the amount determined under subsection (5) is to be treated as paid on each day in the period—
- (a) beginning with the current chargeable period, and
  - (b) ending with the day on which the employer ceases to carry on business, (“the relevant period”).
- (5) The amount referred to in subsection (4) is—

$$\frac{UP}{DRP}$$

where—

UP is the amount of the unrelieved portion, and

DRP is the number of days in the relevant period.

- (6) Expressions used in this section and section 197 have the same meaning in this section as in that section.

#### **199 Deemed contributions**

- (1) This section applies where a sum is paid to the trustees or managers of a registered pension scheme by an employer in or towards the discharge of any liability of the employer under—
- (a) section 75 of the Pensions Act 1995 (c. 26)(deficiencies in the assets of a pension scheme), or
  - (b) Article 75 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) (corresponding provision for Northern Ireland).
- (2) The making of the payment is to be treated for the purposes of—
- (a) Case I and II of Schedule D,
  - (b) section 75 of ICTA (expenses of management: companies with investment business), and
  - (c) section 76 of ICTA (expenses of insurance companies),
- as if it were the payment of a contribution by the employer under the pension scheme.
- (3) Subsections (4) and (5) apply if the employer’s trade, profession, vocation or business is discontinued before the making of the payment.
- (4) The payment is to be relieved—
- (a) to the same extent as it would have been but for the discontinuance, and
  - (b) as if it had been made on the last day on which the trade, profession, vocation or business was carried on.
- (5) And for the purposes of section 76 of ICTA it is to be treated (to the extent that it would not otherwise be) as part of expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.

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## **200 No other relief for employers in connection with contributions**

No sums other than contributions paid by an employer under a registered pension scheme—

- (a) are deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,
- (b) are expenses of management for the purposes of section 75 of ICTA (expenses of management: companies with investment business), or
- (c) are to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),

in connection with the cost of providing benefits under the pension scheme.

## **201 Relief for employees**

- (1) In section 307(1) of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit), after “employer” insert “ under a registered pension scheme or otherwise ”.
- (2) For section 308 of ITEPA 2003 (exemption of contributions to approved personal pension arrangements) substitute—

### **“308 Exemption of contributions to registered pension scheme**

No liability to income tax arises in respect of earnings where an employee’s employer makes contributions under a registered pension scheme.”

VALID FROM 06/04/2006

## *Inland Revenue contributions*

## **202 Minimum contributions under pensions legislation**

- (1) This section applies where under—
  - (a) section 43 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 39 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),
 the Board of Inland Revenue pays minimum contributions for the purposes of a registered pension scheme.
- (2) The amount of the minimum contributions is to be increased by the difference between—
  - (a) the amount of the employee’s share of the minimum contributions, and
  - (b) the grossed-up equivalent of that amount.
- (3) The amount of the employee’s share of the minimum contributions is the amount that would be the amount of the minimum contributions if—
  - (a) for the reference to the age-related percentage in section 45(1) of the Pension Schemes Act 1993 (amount of minimum contributions) there were substituted a reference to the percentage mentioned in section 41(1A) of that Act (percentage used to reduce primary Class 1 contribution), or

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- (b) for the reference to the age-related percentage in section 41(1) of the Pension Schemes (Northern Ireland) Act 1993 there were substituted a reference to the percentage mentioned in section 37(1A) of that Act (corresponding provisions for Northern Ireland).
- (4) The “grossed-up equivalent” of the amount of the employee’s share of the minimum contributions is the sum which, after deduction of income tax at the basic rate in force for the tax year for which the minimum contributions are paid, is equal to that amount.
- (5) The Board of Inland Revenue may by regulations—
  - (a) prescribe circumstances in which this section does not apply, or
  - (b) make provision supplementing this section.
- (6) The Board of Inland Revenue must—
  - (a) pay into the National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes Act 1993, and
  - (b) pay into the Northern Ireland National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes (Northern Ireland) Act 1993.

VALID FROM 06/04/2006

### *Inheritance tax exemptions*

#### **203 Inheritance tax exemptions**

- (1) The Inheritance Tax Act 1984 (c. 51) is amended as follows.
- (2) In section 12 (dispositions that are not transfers of value)—
  - (a) in subsection (2), for the words following “if” substitute “ it is a contribution under a registered pension scheme or section 615(3) scheme in respect of an employee of the person making the disposition. ”, and
  - (b) omit subsections (3) and (4).
- (3) In section 58(1) (settled property in which no qualifying interest in possession subsists but which is not “relevant property”), for paragraph (d) substitute—
  - “(d) property which is held for the purposes of a registered pension scheme or section 615(3) scheme;”.
- (4) In section 151 (treatment of pension rights etc.)—
  - (a) omit subsections (1) and (1A),
  - (b) in subsections (2), (4) and (5), for “fund or scheme to which this section applies” substitute “ registered pension scheme or section 615(3) scheme ”, and
  - (c) in subsection (2)(b), for the “fund or scheme” (in both places) substitute “ scheme ”.

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(5) In section 152 (cash options), for the words from the beginning to “or scheme” substitute “Where on a person’s death an annuity becomes payable under a registered pension scheme or section 615(3) scheme to a widow, widower<sup>F39</sup>, surviving civil partner] or dependant of that person and under the terms of the scheme”.

(6) In section 272 (general interpretation), insert at the appropriate places—

““registered pension scheme” has the same meaning as in Part 4 of the Finance Act 2004;”, and

““section 615(3) scheme” means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;”.

#### **Textual Amendments**

**F39** Words in s. 203(5) inserted (with effect in accordance with reg. 1(7) of the amending S.I.) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **178**

## **CHAPTER 5**

### REGISTERED PENSION SCHEMES: TAX CHARGES

VALID FROM 06/04/2006

#### *Charges on authorised payments*

#### **204 Authorised pensions and lump sums**

- (1) Schedule 31 contains provision about the taxation of pensions and lump sums which are authorised to be paid by this Part.
- (2) Schedule 36 contains (in Part 4) transitional provision about the taxation of annuities under existing retirement annuity contracts and other relevant transitional provision.

#### **205 Short service refund lump sum charge**

- (1) A charge to income tax, to be known as the short service refund lump sum charge, arises where a short service refund lump sum is paid by a registered pension scheme.
- (2) The person liable to the short service refund lump sum charge is the scheme administrator.
- (3) The scheme administrator is liable to the short service refund lump sum charge whether or not—
  - (a) the scheme administrator, and
  - (b) the person to whom the short service refund lump sum is paid, are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The rate of the charge is—

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- (a) 20% in respect of so much of the lump sum as does not exceed £10,800, and
  - (b) 40% in respect of so much (if any) of it as exceeds that limit.
- (5) The Treasury may by order amend subsection (4) so as to—
- (a) increase or decrease either or both of the rates for the time being specified in that subsection, or
  - (b) increase the limit for the time being specified in paragraph (a) of that subsection.
- (6) Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the amount of the lump sum before deduction of tax.
- (7) A short service refund lump sum is not to be treated as income for any purpose of the Tax Acts.

#### **206 Special lump sum death benefits charge**

- (1) A charge to income tax, to be known as the special lump sum death benefits charge, arises where—
- (a) a pension protection lump sum death benefit,
  - (b) an annuity protection lump sum death benefit, or
  - (c) an unsecured pension fund lump sum death benefit,
- is paid by a registered pension scheme.
- (2) The person liable to the special lump sum death benefits charge is the scheme administrator.
- (3) The scheme administrator is liable to the special lump sum death benefits charge whether or not—
- (a) the scheme administrator, and
  - (b) the person to whom the lump sum death benefit is paid,
- are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The rate of the charge is 35% in respect of the lump sum death benefit.
- (5) The Treasury may by order increase or decrease the rate for the time being specified in subsection (4).
- (6) Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the amount of the lump sum before deduction of tax.
- (7) No pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit is to be treated as income for any purpose of the Tax Acts.

#### **207 Authorised surplus payments charge**

- (1) A charge to income tax, to be known as the authorised surplus payments charge, arises where an authorised surplus payment is made to a sponsoring employer by an occupational pension scheme that is a registered pension scheme.



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- (2) The person liable to the authorised surplus payments charge is the scheme administrator.
- (3) The scheme administrator is liable to the authorised surplus payments charge whether or not—
  - (a) the scheme administrator, and
  - (b) the sponsoring employer,
 are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The rate of the charge is 35% in respect of the authorised surplus payment.
- (5) The Treasury may by order increase or decrease the rate for the time being specified in subsection (4).
- (6) Subsection (1) does not apply to any authorised surplus payment—
  - (a) to the extent that (if this section had not been enacted) the sponsoring employer would have been exempt, or entitled to claim exemption, from income tax or corporation tax in respect of it, or
  - (b) if the sponsoring employer is a charity.
- (7) An authorised surplus payment in respect of which income tax is charged under this section is not to be treated as income for any purpose of the Tax Acts.
- (8) Schedule 36 contains (in Part 4) transitional provisions about the authorised surplus payments charge.

VALID FROM 06/04/2006

### *Unauthorised payments charge*

#### **208 Unauthorised payments charge**

- (1) A charge to income tax, to be known as the unauthorised payments charge, arises where an unauthorised payment is made by a registered pension scheme.
- (2) The person liable to the charge—
  - (a) in the case of an unauthorised member payment made before the member's death, is the member to or in respect of whom the payment is made,
  - (b) in the case of an unauthorised member payment made after the member's death, is the recipient, and
  - (c) in the case of an unauthorised employer payment, is the sponsoring employer to or in respect of whom the payment is made.
- (3) If more than one person is liable to the unauthorised payments charge in respect of an unauthorised payment, those persons are jointly and severally liable to the charge in respect of the payment.
- (4) A person is liable to the unauthorised payments charge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the unauthorised payments charge, and
  - (c) the scheme administrator,



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are resident, ordinarily resident or domiciled in the United Kingdom.

- (5) The rate of the charge is 40% in respect of the unauthorised payment.
- (6) The Treasury may by order increase or decrease the rate for the time being specified in subsection (5).
- (7) An unauthorised payment may also be subject to—
  - (a) the unauthorised payments surcharge under section 209, and
  - (b) the scheme sanction charge under section 239.
- (8) An unauthorised payment is not to be treated as income for any purpose of the Tax Acts.

## **209 Unauthorised payments surcharge**

- (1) A charge to income tax, to be known as the unauthorised payments surcharge, arises where a surchargeable unauthorised payment is made by a registered pension scheme.
- (2) “Surchargeable unauthorised payments” means—
  - (a) surchargeable unauthorised member payments (see section 210), and
  - (b) surchargeable unauthorised employer payments (see section 213).
- (3) The person liable to the charge—
  - (a) in the case of a surchargeable unauthorised member payment made before the member’s death, is the member in respect of whose arrangement the payment was made,
  - (b) in the case of a surchargeable unauthorised member payment made after the member’s death, is the recipient, and
  - (c) in the case of a surchargeable unauthorised employer payment, is the sponsoring employer to or in respect of whom the payment was made.
- (4) If more than one person is liable to the unauthorised payments surcharge in respect of a surchargeable unauthorised payment, those persons are jointly and severally liable to the surcharge in respect of the payment.
- (5) A person is liable to the unauthorised payments surcharge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the unauthorised payments surcharge, and
  - (c) the scheme administrator,are resident, ordinarily resident or domiciled in the United Kingdom.
- (6) The rate of the charge is 15% in respect of the surchargeable unauthorised payment.
- (7) The Treasury may by order increase or decrease the rate for the time being specified in subsection (6).

## **210 Surchargeable unauthorised member payments**

- (1) This section identifies which unauthorised member payments made by a registered pension scheme in respect of an arrangement relating to a member under the pension scheme are surchargeable.

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- (2) If the surcharge threshold is reached before the end of the period of 12 months beginning with a reference date, each unauthorised member payment made in respect of the arrangement in the surcharge period is surchargeable.
- (3) The surcharge period is the period—
  - (a) beginning with the reference date, and
  - (b) ending with the day on which the surcharge threshold is reached.
- (4) The first reference date is the date on which the pension scheme first makes an unauthorised member payment in respect of the arrangement.
- (5) Each subsequent reference date is the date, after the end of the previous reference period, on which the pension scheme next makes an unauthorised member payment in respect of the arrangement.
- (6) The previous reference period is the period of 12 months beginning with the previous reference date or, if the surcharge threshold is reached in that period, is the surcharge period ending with the date on which it was reached.
- (7) The surcharge threshold is reached if the unauthorised payments percentage reaches 25%.
- (8) The unauthorised payments percentage is the aggregate of the percentages of the pension fund used up by each unauthorised member payment made by the pension scheme in respect of the arrangement on or after the reference date.
- (9) The percentage of the pension fund used up on the occasion of an unauthorised member payment is—

$$\frac{\text{UMP}}{\text{VR}} \times 100$$

where—

UMP is the amount of the unauthorised member payment, and

VR is an amount equal to the value of the member's rights under the arrangement when the unauthorised payment is made (or, if the unauthorised payment is made after the member's death, at the date of the member's death).

- (10) The value of the member's rights under the arrangement on that date is the aggregate of—
  - (a) the value of the member's crystallised rights under the arrangement on that date, calculated in accordance with section 211, and
  - (b) the value of the member's uncrystallised rights under the arrangement on that date, calculated in accordance with section 212.

## **211 Valuation of crystallised rights for purposes of section 210**

- (1) The value of the member's crystallised rights under the arrangement on any date is the aggregate of—

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- (a) the value of each scheme pension or lifetime annuity to which the member has an actual (rather than a prospective) entitlement under the arrangement on that date, and
  - (b) the aggregate of the amount of the sums, and the market value of the assets, representing the member's unsecured pension fund or alternatively secured pension fund in respect of the arrangement on that date (if any).
- (2) The value of a scheme pension or lifetime annuity is—

$$RVF \times ARP$$

where—

RVF is the relevant valuation factor (see section 276), and

ARP is an amount equal to the annual rate of the pension or annuity on the date.

## **212 Valuation of uncrystallised rights for purposes of section 210**

- (1) Rights are uncrystallised if the member is not entitled to the present payment of benefits in respect of the rights.
- (2) The member is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the member's unsecured pension fund or alternatively secured pension fund.
- (3) The value of the member's uncrystallised rights under the arrangement on any date is to be calculated—
  - (a) in accordance with subsection (4) if the arrangement is a cash balance arrangement,
  - (b) in accordance with subsection (5) if the arrangement is a money purchase arrangement other than a cash balance arrangement,
  - (c) in accordance with subsection (6) if the arrangement is a defined benefits arrangement, and
  - (d) in accordance with subsection (7) if the arrangement is a hybrid arrangement.
- (4) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if the member became entitled to benefits in respect of those rights on the date.
- (5) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is the aggregate of—
  - (a) the amount of such of the sums held for the purposes of the arrangement on the date as represent those rights, and
  - (b) the market value of such of the assets held for the purposes of the arrangement on the date as represent those rights.
- (6) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is—

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$$(RVF \times ARP) + LS$$

where—

RVF is the relevant valuation factor (see section 276),

ARP is the annual rate of pension to which the member would, on the valuation assumptions, be entitled under the arrangement on the date if, on the date, the member acquired an actual (rather than a prospective) right to receive a pension in respect of the rights, and

LS is the amount of any lump sum to which the member would, on the valuation assumptions, be entitled under the arrangement on the date (otherwise than by way of commutation of pension) if, on the date, the member acquired an actual (rather than a prospective) right to payment of a lump sum in respect of the rights.

- (7) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is—
- (a) if each of subsections (4), (5) and (6) is relevant, the greatest of the values of the rights calculated in accordance with each of those subsections, or
  - (b) if only two of those subsections are relevant, the greater of the values of the rights calculated in accordance with each of the two subsections.
- (8) Subsection (4) is relevant if, in any circumstances, cash balance benefits may be provided to or in respect of the member under the arrangement.
- (9) Subsection (5) is relevant if, in any circumstances, money purchase benefits other than cash balance benefits may be provided to or in respect of the member under the arrangement.
- (10) Subsection (6) is relevant if, in any circumstances, defined benefits may be provided to or in respect of the member under the arrangement.

### **213 Surchargeable unauthorised employer payments**

- (1) This section identifies which unauthorised employer payments made by a registered pension scheme to or in respect of a sponsoring employer are surchargeable.
- (2) If the surcharge threshold is reached before the end of the period of 12 months beginning with a reference date, each unauthorised employer payment made to or in respect of the employer in the surcharge period is surchargeable.
- (3) The surcharge period is the period—
  - (a) beginning with the reference date, and
  - (b) ending with the day on which the surcharge threshold is reached.
- (4) The first reference date is the date on which the pension scheme first makes an unauthorised employer payment to or in respect of the employer.
- (5) Each subsequent reference date is the date, after the end of the previous reference period, on which the pension scheme next makes an unauthorised employer payment to or in respect of the employer.

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- (6) The previous reference period is the period of 12 months beginning with the previous reference date or, if the surcharge threshold is reached in that period, is the surcharge period ending with the date on which it was reached.
- (7) The surcharge threshold is reached if the unauthorised payments percentage reaches 25%.
- (8) The unauthorised payments percentage is the aggregate of the percentages of the pension fund used up by each unauthorised employer payment made by the pension scheme to or in respect of the employer on or after the reference date.
- (9) The percentage of the pension fund used up on the occasion of an unauthorised employer payment is—

$$\frac{\text{UEP}}{\text{AA}} \times 100$$

where—

UEP is the amount of the unauthorised employer payment, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the unauthorised employer payment is made.

VALID FROM 06/04/2006

### *Lifetime allowance charge*

#### **214 Lifetime allowance charge**

- (1) A charge to income tax, to be known as the lifetime allowance charge, arises where—
  - (a) a benefit crystallisation event occurs in relation to an individual who is a member of one or more registered pension schemes, and
  - (b) either the first lifetime allowance charge condition or the second lifetime allowance charge condition is met.
- (2) The first lifetime allowance charge condition is that—
  - (a) the whole or any part of the individual's lifetime allowance is available on the benefit crystallisation event, but
  - (b) the amount crystallised by the benefit crystallisation event exceeds the amount of the individual's lifetime allowance which is available on the benefit crystallisation event.
- (3) The second lifetime allowance charge condition is that none of the individual's lifetime allowance is available on the benefit crystallisation event.
- (4) The following sections make further provision about the lifetime allowance charge—  
section 215 (amount of charge),

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section 216 and Schedule 32 (benefit crystallisation events and amounts crystallised),  
 section 217 (persons liable to charge),  
 section 218 (individual's lifetime allowance and standard lifetime allowance),  
 section 219 (availability of individual's lifetime allowance), and  
 sections 220 to 226 (lifetime allowance enhancement factors).

(5) In sections 215 to 219—

- (a) references to “the individual”, in relation to the lifetime allowance charge, are to the individual in relation to whom the benefit crystallisation event giving rise to the charge occurs, and
- (b) references to “the pension scheme”, in relation to the lifetime allowance charge, are to the pension scheme to which the benefit crystallisation event giving rise to the charge, or the amount crystallised by it, relates.

(6) Schedule 36 contains (in Part 2) transitional provision about the lifetime allowance charge.

## **215 Amount of charge**

(1) The lifetime allowance charge is a charge in respect of the chargeable amount.

(2) The lifetime allowance charge is a charge—

- (a) at the rate of 55% in respect of so much (if any) of the chargeable amount as constitutes the lump-sum amount, and
- (b) at the rate of 25% in respect of so much (if any) of the chargeable amount as constitutes the retained amount.

(3) The “chargeable amount” is the aggregate of—

- (a) the basic amount, and
- (b) any amount which is treated as forming part of the lump-sum amount under subsection (6) or of the retained amount under subsection (8).

(4) The “basic amount”—

- (a) if the first lifetime allowance condition is met, is the amount by which the amount crystallised by the benefit crystallisation event exceeds the amount of the individual's lifetime allowance available on it, and
- (b) if the second lifetime allowance charge condition is met, is the amount crystallised by the benefit crystallisation event.

(5) The “lump-sum amount” is the aggregate of—

- (a) so much of the basic amount as is paid as a lump sum to the individual or a lump sum death benefit in respect of the individual, and
- (b) any amount which is treated as forming part of the lump-sum amount under subsection (6).

(6) If and to the extent that the tax payable under this section on any of the lump-sum amount is covered by a scheme-funded tax payment, it is to be treated as itself forming part of the lump-sum amount.

(7) The “retained amount” is the aggregate of—

- (a) so much of the basic amount as is not paid as a lump sum to the individual or a lump sum death benefit in respect of the individual, and

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- (b) any amount which is treated as forming part of the retained amount under subsection (8).
- (8) If and to the extent that the tax payable under this section on any of the retained amount is covered by a scheme-funded tax payment, it is to be treated as itself forming part of the retained amount.
- (9) An amount of tax payable under this section is “covered by a scheme-funded tax payment” if—
- (a) the tax is paid by the scheme administrator, and
  - (b) the individual’s rights under the pension scheme are not reduced so as fully to reflect the amount of the payment of tax.
- (10) Whether the individual’s rights under the pension scheme are reduced so as fully to reflect the amount of the payment of tax is to be determined in accordance with normal actuarial practice.
- (11) The chargeable amount is not to be treated as income for any purpose of the Tax Acts.

## 216 Benefit crystallisation events and amounts crystallised

- (1) This table sets out—
- (a) the events which are benefit crystallisation events in relation to the individual, and
  - (b) the amount which is crystallised by each of those events.

<b><i>BENEFIT CRYSTALLISATION EVENTS</i></b>	<b><i>AMOUNT CRYSTALLISED</i></b>
1. The designation of sums or assets held for the purposes of a money purchase arrangement under any of the relevant pension schemes as available for the payment of unsecured pension to the individual	The aggregate of the amount of the sums and the market value of the assets designated
2. The individual becoming entitled to a scheme pension under any of the relevant pension schemes	$RVF \times P$
3. The individual, having become so entitled, becoming entitled to payment of the scheme pension, otherwise than in excepted circumstances, at an increased annual rate which exceeds by more than the permitted margin the rate at which it was payable on the day on which the individual became entitled to it	$RVF \times XP$
4. The individual becoming entitled to a lifetime annuity purchased under a money purchase arrangement under any of the relevant pension schemes	The aggregate of the amount of such of the sums, and the market value of such of the assets, representing the individual’s rights under the



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	arrangement as are applied to purchase the lifetime annuity
5. The individual reaching the age of 75 when prospectively entitled to a scheme pension or a lump sum (or both) under a defined benefits arrangement under any of the relevant pension schemes	$(RVF \times DP) + DSLS$
6. The individual becoming entitled to a relevant lump sum under any of the relevant pension schemes	The amount of the lump sum
7. A person being paid a relevant lump sum death benefit in respect of the individual under any of the relevant pension schemes	The amount of the lump sum death benefit
8. The transfer of sums or assets held for the purposes of, or representing accrued rights under, any of the relevant pension schemes so as to become held for the purposes of or to represent rights under a qualifying recognised overseas pension scheme in connection with the individual's membership of that pension scheme	The aggregate of the amount of any sums transferred and the market value of any assets transferred

(2) Schedule 32 gives the meaning of expressions used in the table in subsection (1).

## 217 Persons liable to charge

- (1) The persons liable to the lifetime allowance charge are—
  - (a) the individual, and
  - (b) the scheme administrator of the pension scheme, and their liability is joint and several.
- (2) But where the liability arises by reason of the payment of a relevant lump sum death benefit it is a liability of the person to whom the lump sum death benefit is paid.
- (3) Subsection (4) applies if—
  - (a) more than one relevant lump sum death benefit is paid in respect of an individual, and
  - (b) tax is not chargeable on the whole amount of all of them.
- (4) In that case each of the persons to whom any of the relevant lump sum death benefits is paid is liable under subsection (2) to such portion of the total amount of the tax payable by reason of their having been paid as appears to the Inland Revenue to be just and reasonable.
- (5) A person is liable to the lifetime allowance charge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the lifetime allowance charge, and
  - (c) the scheme administrator (if not so liable),



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are resident, ordinarily resident or domiciled in the United Kingdom.

## **218 Individual's lifetime allowance and standard lifetime allowance**

- (1) Subject as follows, the individual's lifetime allowance is the standard lifetime allowance.
- (2) The standard lifetime allowance for the tax year 2006-07 is £1,500,000.
- (3) The standard lifetime allowance for each subsequent tax year is such amount, not being less than the standard lifetime allowance for the immediately preceding tax year, as is specified by order made by the Treasury.
- (4) Where one or more lifetime allowance enhancement factors operate in relation to a benefit crystallisation event occurring in relation to the individual, the individual's lifetime allowance at the time of the benefit crystallisation event is—

$$SLA + (SLA \times LAEF)$$

where—

SLA is the standard lifetime allowance at the time of the benefit crystallisation event, and

LAEF is the lifetime allowance enhancement factor which operates with respect to the benefit crystallisation event and the individual or (where more than one so operates) the aggregate of them.

- (5) The following make provision for the operation of lifetime allowance enhancement factors—
  - section 220 (pension credits from previously crystallised rights),
  - sections 221 to 223 (individuals who are not always relevant UK individuals),
  - sections 224 to 226 (transfers from recognised overseas pension schemes),
  - paragraphs 7 to 11 of Schedule 36 (primary protection), and
  - paragraph 18 of that Schedule (pre-commencement pension credits).
- (6) Paragraph 19 of that Schedule makes provision for the reduction of what would otherwise be the individual's lifetime allowance in certain cases where the individual is permitted to take pension before normal minimum pension age.
- (7) In this Part references (however expressed) to a person's lifetime allowance at any time are to what would be the person's lifetime allowance, calculated in accordance with this section, if a benefit crystallisation event occurred in relation to the person at that time.

## **219 Availability of individual's lifetime allowance**

- (1) This section is about the availability of the individual's lifetime allowance on the occurrence of a benefit crystallisation event in relation to the individual ("the current benefit crystallisation event").

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- (2) If no benefit crystallisation event has occurred in relation to the individual before the current benefit crystallisation event, the whole of the individual's lifetime allowance is available on the current benefit crystallisation event.
- (3) If one or more benefit crystallisation events have occurred in relation to the individual before the current benefit crystallisation event—
  - (a) in a case in which the previously-used amount is equal to or greater than the amount of the individual's lifetime allowance, none of the individual's lifetime allowance is available on the current benefit crystallisation event, and
  - (b) in any other case, so much of the individual's lifetime allowance as is left after deducting the previously-used amount is available on the current benefit crystallisation event.
- (4) The previously-used amount is—
  - (a) where one benefit crystallisation event has occurred in relation to the individual before the current benefit crystallisation event, the amount crystallised by the previous benefit crystallisation event as adjusted under subsection (5), or
  - (b) where two or more benefit crystallisation events have occurred in relation to the individual before the current benefit crystallisation event, the aggregate of the amounts crystallised by each previous benefit crystallisation event as adjusted under subsection (5).
- (5) The adjustment of the amount crystallised by a previous benefit crystallisation event referred to in subsection (4)(a) and (b) is the multiplication of that amount by—

$$\frac{\text{CSLA}}{\text{PSLA}}$$

where—

CSLA is the standard lifetime allowance at the time of the current benefit crystallisation event, and

PSLA is the standard lifetime allowance at the time of the previous benefit crystallisation event.

- (6) Where more than one benefit crystallisation event occurs in relation to an individual on the same day, it is for the individual to decide the order in which they are to be treated as occurring for the purposes of this section; but this subsection is subject to section 166(2) (entitlement to pension commencement lump sum to arise immediately before entitlement to associated pension).
- (7) Where more than one benefit crystallisation event occurs by reason of the payment of lump sum death benefits in respect of an individual the benefit crystallisation events are to be treated for the purposes of this section as occurring immediately before the individual's death.
- (8) Paragraph 20 of Schedule 36 makes provision affecting this section in relation to pre-commencement pensions.

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- (9) In this Part references (however expressed) to the portion of a person's lifetime allowance that is available at any time are to the portion of the person's lifetime allowance that would be available, calculated in accordance with this section, if a benefit crystallisation event occurred in relation to the person at that time.

## 220 Pension credits from previously crystallised rights

- (1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where—
- the individual has (at any time after 5th April 2006 but before the benefit crystallisation event) acquired rights under a registered pension scheme by reason of having become entitled to a pension credit,
  - the pension credit derived from the same or another registered pension scheme, and
  - the rights under that registered pension scheme which became subject to the corresponding pension debit consisted of or included rights to a post-commencement pension in payment.
- (2) “Post-commencement pension in payment” means a pension to which a person became (actually) entitled on or after 6th April 2006.
- (3) The lifetime allowance enhancement factor is the pension credit factor.
- (4) The pension credit factor is—

$$\frac{APC}{SLA}$$

where—

APC is the amount which is the appropriate amount for the purposes of section 29(1) of WRP(A) 1999 or Article 26(1) of WRP(NI)O 1999 in relation to the pension credit, and

SLA is the standard lifetime allowance at the time when the rights were acquired.

- (5) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

## 221 Non-residence: general

- (1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where, during any part of the period that is the active membership period in relation to an arrangement relating to the individual under a registered pension scheme, the individual is a relevant overseas individual.
- (2) Section 222 provides the lifetime allowance enhancement factor in the case of an arrangement that is a money purchase arrangement; and section 223 provides the lifetime allowance enhancement factor in the case of any other arrangement.

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- (3) For the purposes of this Part an individual is a relevant overseas individual at any time if, at that time, the individual either is not a relevant UK individual or—
- (a) is a relevant UK individual only by virtue of paragraph (c) of section 189(1) (individuals resident in UK at some time in previous five tax years), and
  - (b) is not employed by a person resident in the United Kingdom.
- (4) In this section and sections 222 and 223 “the active membership period”, in relation to a benefit crystallisation event occurring in relation to an arrangement relating to the individual, is the period—
- (a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the arrangement or, if later, 6th April 2006, and
  - (b) ending immediately before the benefit crystallisation event.
- (5) But if benefits ceased to accrue to or in respect of the individual under the arrangement before the benefit crystallisation event, the active membership period is to be treated as having ended then.
- (6) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

## 222 Non-residence: money purchase arrangements

- (1) This section applies in the case of an arrangement that is a money purchase arrangement.
- (2) The lifetime allowance enhancement factor is—
- (a) if the arrangement is a cash balance arrangement, the cash balance arrangement non-residence factor (see subsections (3) to (5)), and
  - (b) if the arrangement is any other sort of money purchase arrangement, the other money purchase arrangement non-residence factor (see subsections (6) and (7)).
- (3) The cash balance arrangement non-residence factor is—
- (a) the factor arrived at by the application of subsection (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{CV - OV}{SLA}$$

where—

CV is the closing value of the individual’s rights under the arrangement,

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OV is the opening value of the individual's rights under the arrangement, and  
SLA is the standard lifetime allowance at the time when that part of that period ended.

- (5) For the purposes of subsection (4)—
- (a) the closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and
  - (b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.
- (6) The other money purchase arrangement non-residence factor is—
- (a) the factor arrived at by the application of subsection (7) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (7) in relation to each of those parts of that period.
- (7) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{\text{ROIC}}{\text{SLA}}$$

where—

ROIC is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the active membership period during which the individual is a relevant overseas individual, and

SLA is the standard lifetime allowance at the time when that part of that period ended.

## 223 Non-residence: other arrangements

- (1) This section applies in the case of an arrangement that is not a money purchase arrangement.
- (2) The lifetime allowance enhancement factor is—
- (a) if the arrangement is a defined benefits arrangement, the defined benefits arrangement non-residence factor (see subsections (3) and (4)), and
  - (b) if the arrangement is a hybrid arrangement, the hybrid arrangement non-residence factor (see subsections (5) to (7)).
- (3) The defined benefits arrangement non-residence factor is—

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- (a) the factor arrived at by the application of subsection (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or
- (b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{(RVF \times PE + LSE) - (RVF \times PB + LSB)}{SLA}$$

where—

RVF is the relevant valuation factor (see section 276),

PE is the amount of the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of that part of that period,

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period,

PB is the amount of the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period,

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period, and

SLA is the standard lifetime allowance at the time when that part of that period ended.

- (5) The hybrid arrangement non-residence factor is the greater or greatest of such of—
- (a) what would be the cash balance arrangement non-residence factor (under section 222) if the arrangement were a cash balance arrangement,
- (b) what would be the other money purchase arrangement non-residence factor (under that section) if the arrangement were any other sort of money purchase arrangement, and
- (c) what would be the defined benefits arrangement non-residence factor (under subsections (3) and (4)) if the arrangement were a defined benefits arrangement,
- as are relevant factors in relation to the arrangement.
- (6) A factor is a relevant factor in relation to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that factor.

- (7) For that purpose—

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- (a) cash balance benefits are linked to the cash balance arrangement non-residence factor,
- (b) other money purchase benefits are linked to the other money purchase arrangement non-residence factor, and
- (c) defined benefits are linked to the defined benefits arrangement non-residence factor.

## 224 Transfers from recognised overseas pension scheme: general

- (1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where (at any time after 5th April 2006 but before the benefit crystallisation event) there has been a recognised overseas scheme transfer.
- (2) There is a “recognised overseas scheme transfer” if any sums or assets—
  - (a) held for the purposes of an arrangement under a recognised overseas pension scheme, or
  - (b) representing accrued rights under such an arrangement,are transferred so as to become held for the purposes of, or to represent rights under, an arrangement under a registered pension scheme relating to the individual.
- (3) The arrangement specified in subsection (2)(a) or (b) is referred to in this section and sections 225 and 226 as the “recognised overseas scheme arrangement”.
- (4) The lifetime allowance enhancement factor is the recognised overseas scheme transfer factor.
- (5) The recognised overseas scheme transfer factor is—

$$\frac{\text{AAT} - \text{RRA}}{\text{SLA}}$$

where—

AAT is the aggregate of the amount of any sums transferred, and the market value of any assets transferred, on the recognised overseas scheme transfer,

RRA is the relevant relievable amount, and

SLA is the standard lifetime allowance at the time when the recognised overseas scheme transfer took place.

- (6) Section 225 specifies the relevant relievable amount in the case of a recognised overseas scheme arrangement that was a money purchase arrangement; and section 226 specifies the relevant relievable amount in the case of an recognised overseas scheme arrangement that was any other sort of arrangement.
- (7) In this section and sections 225 and 226 “overseas arrangement active membership period” is the period—
  - (a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the recognised overseas scheme arrangement or, if later, 6th April 2006, and
  - (b) ending immediately before the recognised overseas scheme transfer.



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- (8) But if benefits ceased to accrue to or in respect of the individual under the recognised overseas scheme arrangement before the recognised overseas scheme transfer, the overseas arrangement active membership period is to be treated as having ended then.
- (9) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

## 225 Overseas scheme transfers: money purchase arrangements

- (1) This section applies in the case of a recognised overseas scheme arrangement that was a money purchase arrangement.
- (2) The relevant relievable amount is—
  - (a) if the recognised overseas scheme arrangement was a cash balance arrangement, the cash balance relevant relievable amount (see subsections (3) to (5)), and
  - (b) if the recognised overseas scheme arrangement was any other sort of money purchase arrangement, the other money purchase relevant relievable amount (see subsections (6) and (7)).
- (3) The cash balance relevant relievable amount is—
  - (a) the amount arrived at by the application of subsection (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

$$CV - OV$$

where—

CV is the closing value of the individual's rights under the arrangement, and

OV is the opening value of the individual's rights under the arrangement.

- (5) For the purposes of subsection (4)—
  - (a) the closing value of the individual's rights under the recognised overseas scheme arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and
  - (b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.
- (6) The other money purchase relevant relievable amount is—



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- (a) the amount arrived at by the application of subsection (7) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (7) in relation to each of those parts of that period.
- (7) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual.

## 226 Overseas scheme transfers: other arrangements

- (1) This section applies in the case of a recognised overseas scheme arrangement that was not a money purchase arrangement.
- (2) The relevant relievable amount is—
- (a) if the recognised overseas scheme arrangement was a defined benefits arrangement, the defined benefits relevant relievable amount (see subsections (3) and (4)), and
  - (b) if the recognised overseas scheme arrangement was a hybrid arrangement, the hybrid relevant relievable amount (see subsections (5) to (7)).
- (3) The defined benefits relevant relievable amount is—
- (a) the amount arrived at by the application of subsection (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or
  - (b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (4) in relation to each of those parts of that period.
- (4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

$$(RVF \times PE + LSE) - (RVF \times PB + LSB)$$

where—

RVF is the relevant valuation factor (see section 276),

PE is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the recognised overseas scheme arrangement if the individual became entitled to payment of it at the end of that part of that period,

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period,

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PB is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period, and

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period.

- (5) The hybrid relevant relievable amount is the greater or greatest of such of—
- (a) what would be the cash balance relevant relievable amount (under section 225) if the recognised overseas scheme arrangement had been a cash balance arrangement,
  - (b) what would be the other money purchase relevant relievable amount (under that section) if that arrangement had been any other sort of money purchase arrangement, and
  - (c) what would be the defined benefits relevant relievable amount (under subsections (3) and (4)) if that arrangement had been a defined benefits arrangement,
- as are relevant to that arrangement.
- (6) An amount is relevant to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that amount.
- (7) For that purpose—
- (a) cash balance benefits are linked to the cash balance relevant relievable amount,
  - (b) other money purchase benefits are linked to the other money purchase relevant relievable amount, and
  - (c) defined benefits are linked to the defined benefits relevant relievable amount.

### *Annual allowance charge*

VALID FROM 06/04/2006

#### **227 Annual allowance charge**

- (1) A charge to income tax, to be known as the annual allowance charge, arises where—
  - (a) the total pension input amount for a tax year in the case of an individual who is a member of one or more registered pension schemes, exceeds
  - (b) the amount of the annual allowance for the tax year.
- (2) The person liable to the annual allowance charge is the individual.
- (3) The individual is liable to the annual allowance charge whether or not—
  - (a) the individual, and
  - (b) the scheme administrator of the pension scheme or schemes concerned, are resident, ordinarily resident or domiciled in the United Kingdom.

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- (4) The annual allowance charge is a charge at the rate of 40% in respect of the amount by which the total pension input amount exceeds the amount of the annual allowance.
- (5) That excess is not to be treated as income for any purpose of the Tax Acts.
- (6) The following sections make further provision about the annual allowance charge—  
section 228 (annual allowance),  
section 229 (total pension input amount to be aggregate of pension input amounts for pension input periods ending in tax year),  
sections 230 to 237 (pension input amounts), and  
section 238 (pension input period).
- (7) Schedule 36 contains (in Part 4) transitional provision about the annual allowance charge.

## 228 Annual allowance

- (1) The annual allowance for the tax year 2006-07 is £215,000.
- (2) The annual allowance for each subsequent tax year is such amount, not being less than the annual allowance for the immediately preceding tax year, as is specified by order made by the Treasury.

VALID FROM 06/04/2006

## 229 Total pension input amount

- (1) The total pension input amount is arrived at by aggregating the pension input amounts in respect of each arrangement relating to the individual under a registered pension scheme of which the individual is a member.
- (2) The pension input amount in respect of an arrangement—
  - (a) is the amount arrived at under sections 230 to 232 if it is a cash balance arrangement,
  - (b) is the amount arrived at under section 233 if it is any other sort of money purchase arrangement,
  - (c) is the amount arrived at under sections 234 to 236 if it is a defined benefits arrangement, and
  - (d) is the amount arrived at under section 237 if it is a hybrid arrangement.
- (3) But there is no pension input amount in respect of an arrangement if, before the end of the tax year, the individual—
  - (a) has become entitled to all the benefits which may be provided to the individual under the arrangement, or
  - (b) has died.

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VALID FROM 06/04/2006

### 230 Cash balance arrangements

- (1) The pension input amount in respect of a cash balance arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.
- (2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—
  - (a) the opening value of the individual's rights under the arrangement, is exceeded by
  - (b) the closing value of the individual's rights under the arrangement.
- (3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.
- (4) The opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of the pension input period.
- (5) The closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of the pension input period.
- (6) Section 231 (uprating of opening value) and section 232 (adjustments of closing value) supplement this section.

VALID FROM 06/04/2006

### 231 Cash balance arrangements: uprating of opening value

- (1) This section applies for adjusting the opening value of the individual's rights as calculated under section 230(4).
- (2) The opening value is to be increased by the appropriate percentage.
- (3) The appropriate percentage is whichever is the greatest of—
  - (a) 5%,
  - (b) the percentage (if any) by which the retail prices index for the month in which the pension input period ends is higher than it was for the month in which it began, and
  - (c) if provision made by regulations made by the Board of Inland Revenue applies in relation to the arrangement, the percentage to which the regulations refer.

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VALID FROM 06/04/2006

## 232 Cash balance arrangements: adjustments of closing value

- (1) This section applies for adjusting the closing value of the individual's rights under the arrangement as calculated under section 230(5).
- (2) If, during the pension input period, the rights of the individual under the arrangement have been reduced by having become subject to a pension debit, the amount of the debit is to be added.
- (3) If, during the pension input period, the rights of the individual under the arrangement have been increased by the individual having become entitled to a pension credit deriving from the same or another registered pension scheme, the amount of the credit is to be subtracted.
- (4) Subsection (5) applies if, during the pension input period, the rights of the individual under the arrangement have been reduced by virtue of a transfer of any sum or asset held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any other pension scheme that is—
  - (a) a registered pension scheme, or
  - (b) a qualifying recognised overseas pension scheme.
- (5) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be added.
- (6) Subsection (7) applies if, during the pension input period, the rights of the individual under the arrangement have been increased by virtue of a transfer of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement.
- (7) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be subtracted.
- (8) If, during the pension input period, a benefit crystallisation event occurs in relation to the individual and the arrangement, the amount crystallised is to be added (but this is subject to section 229(3)).
- (9) If, during the pension input period, minimum payments are made under—
  - (a) section 8 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),in relation to the individual in connection with the arrangement, the amount paid is to be subtracted.

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VALID FROM 06/04/2006

### 233 Other money purchase arrangements

- (1) The pension input amount in respect of a money purchase arrangement other than a cash balance arrangement is the total of—
  - (a) any relievable pension contributions paid by or on behalf of the individual under the arrangement, and
  - (b) contributions paid in respect of the individual under the arrangement by an employer of the individual,
 during the pension input period of the arrangement that ends in the tax year.
- (2) The references to contributions in subsection (1)(a) and (b) do not include minimum payments under—
  - (a) section 8 of the Pension Schemes Act 1993, or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),
 or any amount recovered under regulations made under subsection (3) of either of those sections.
- (3) When at any time contributions paid under a pension scheme by an employer otherwise than in respect of any individual become held for the purposes of the provision under an arrangement under the pension scheme of benefits to or in respect of an individual, they are to be treated as being contributions paid at that time in respect of the individual under the arrangement.

VALID FROM 06/04/2006

### 234 Defined benefits arrangements

- (1) The pension input amount in respect of a defined benefits arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.
- (2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—
  - (a) the opening value of the individual's rights under the arrangement, is exceeded by
  - (b) the closing value of the individual's rights under the arrangement.
- (3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.
- (4) The opening value of the individual's rights under the arrangement is—

$$(10 \times PB) + LSB$$

where—

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PB is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of the pension input period, and

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.

(5) The closing value of the individual's rights under the arrangement is—

$$(10 \times PE) + LSE$$

where—

PE is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the pension input period, and

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.

(6) Section 235 (uprating of opening value) and section 236 (adjustments of closing value) supplement this section.

VALID FROM 06/04/2006

### **235 Defined benefits arrangements: uprating of opening value**

- (1) This section applies for adjusting the opening value of the individual's rights as calculated under section 234(4) in a case where rights do not accrue to the individual under the arrangement during the pension input period.
- (2) The opening value is to be increased by the appropriate percentage.
- (3) The appropriate percentage is whichever is the greatest of—
  - (a) 5%,
  - (b) the percentage (if any) by which the retail prices index for the month in which the pension input period ends is higher than it was for the month in which it began, and
  - (c) if provision made by regulations made by the Board of Inland Revenue applies in relation to the arrangement, the percentage to which the regulations refer.



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### 236 Defined benefits arrangements: adjustments of closing value

- (1) This section applies for adjusting the closing value of the individual's rights as calculated under section 234(5).
- (2) If, during the pension input period, the rights of the individual under the arrangement have been reduced by having become subject to a pension debit, the amount of the debit is to be added.
- (3) If, during the pension input period, the rights of the individual under the arrangement have been increased by the individual having become entitled to a pension credit deriving from the same or another registered pension scheme, the amount of the credit is to be subtracted.
- (4) Subsection (5) applies if, during the pension input period, there is a transfer relating to the individual of any sum or asset held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any other pension scheme that is—
  - (a) a registered pension scheme, or
  - (b) a qualifying recognised overseas pension scheme.
- (5) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be added.
- (6) Subsection (7) applies if, during the pension input period, there is a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement.
- (7) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be subtracted.
- (8) If, during the pension input period, a benefit crystallisation event occurs in relation to the individual and the arrangement, the amount crystallised is to be added (but this is subject to section 229(3)).
- (9) If, during the pension input period, minimum payments are made under—
  - (a) section 8 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),
 in relation to the individual in connection with the arrangement, the amount paid is to be subtracted.

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### 237 Hybrid arrangements

- (1) The pension input amount in respect of a hybrid arrangement is the greater or greatest of such of input amounts A, B and C as are relevant input amounts.



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- (2) An input amount is a relevant input amount in the case of a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits of the variety mentioned in the definition of that input amount.
- (3) Input amount A is what would be the pension input amount under sections 230 to 232 if the benefits provided to or in respect of the individual under the arrangement were cash balance benefits.
- (4) Input amount B is what would be the pension input amount under section 233 if the benefits provided to or in respect of the individual under the arrangement were other money purchase benefits.
- (5) Input amount C is what would be the pension input amount under sections 234 to 236 if the benefits provided to or in respect of the individual under the arrangement were defined benefits.

VALID FROM 06/04/2006

### 238 Pension input period

- (1) In the case of an arrangement under a registered pension scheme the following are pension input periods—
  - (a) the period beginning with the relevant commencement date and ending with the earlier of a nominated date and the anniversary of the relevant commencement date, and
  - (b) each subsequent period beginning immediately after the end of a period which is a pension input period (under paragraph (a) or this paragraph) and ending with the appropriate date.
- (2) “The relevant commencement date” means—
  - (a) in the case of a cash balance arrangement or a defined benefits arrangement, or a hybrid arrangement the only benefits under which may be cash balance benefits or defined benefits, the date on which rights under the arrangement begin to accrue to or in respect of the individual,
  - (b) in the case of a money purchase arrangement other than a cash balance arrangement, the first date on which a contribution within section 233(1) is made, and
  - (c) in the case of a hybrid arrangement not within paragraph (a), whichever is the earlier of the date mentioned in that paragraph and the date mentioned in paragraph (b).
- (3) “Nominated date” means—
  - (a) in the case of a money purchase arrangement other than a cash balance arrangement, such date as the individual or scheme administrator nominates, and
  - (b) in the case of any other arrangement, such date as the scheme administrator nominates.
- (4) A nomination for the purposes of subsection (3)—
  - (a) if by the individual, is to be made by notice to the scheme administrator, and

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- (b) if by the scheme administrator, is to be made by notice to the individual.
- (5) If more than one date is nominated for the purposes of subsection (3)—
  - (a) in relation to the period beginning with the relevant commencement date, or
  - (b) in relation to a tax year following that in which the pension input period beginning with that date ends,
 the date nominated first is the nominated date.
- (6) “The appropriate date” means the earlier of—
  - (a) a nominated date falling in the tax year immediately after that in which the last pension input period ended, and
  - (b) the anniversary of the date on which that period ended.
- (7) Once the individual has become entitled to all the benefits which may be provided to the individual under an arrangement, the last pension input period in the case of the arrangement is to be treated as having ended when that was first so.

VALID FROM 06/04/2006

### *Scheme sanction charge*

#### **239 Scheme sanction charge**

- (1) A charge to income tax, to be known as the scheme sanction charge, arises where in any tax year one or more scheme chargeable payments are made by a registered pension scheme.
- (2) The person liable to the scheme sanction charge is the scheme administrator.
- (3) But in the case of a payment treated by virtue of section 161(3) and (4) (payments under investments acquired with scheme assets) as having been made by a pension scheme which has been wound up, the person liable to the scheme sanction charge is the person who was, or each of the persons who were, the scheme administrator immediately before the pension scheme was wound up.
- (4) A person liable to the scheme sanction charge is liable whether or not—
  - (a) that person, and
  - (b) any other person who is liable to the scheme sanction charge, are resident, ordinarily resident or domiciled in the United Kingdom.
- (5) The following sections make further provision about the scheme sanction charge—
  - section 240 (amount of charge), and
  - section 241 (scheme chargeable payment).

#### **240 Amount of charge**

- (1) The scheme sanction charge for any tax year is a charge at the rate of 40% in respect of the scheme chargeable payment, or the aggregate of the scheme chargeable payments, made by the pension scheme in the tax year.
- (2) But if—

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- (a) the scheme chargeable payment is an unauthorised payment, or any of the scheme chargeable payments are unauthorised payments, and
  - (b) tax charged in relation to that payment, or any of those payments, under section 208 (unauthorised payments charge) has been paid,
- a deduction is to be made from the amount of tax that would otherwise be chargeable for the tax year by virtue of subsection (1).
- (3) The amount of the deduction is the lesser of—
- (a) 25% of the amount of the scheme chargeable payment, or of the aggregate amount of such of the scheme chargeable payments as are tax-paid, and
  - (b) the amount of the tax which has been paid under section 208 in relation to the scheme chargeable payment, or in relation to such of the scheme chargeable payments as are tax-paid.
- (4) A scheme chargeable payment is “tax-paid” if the whole or any part of the tax chargeable in relation to it under section 208 has been paid.

#### **241 Scheme chargeable payment**

- (1) In this Part “scheme chargeable payment”, in relation to a registered pension scheme, means—
- (a) an unauthorised payment by the pension scheme, other than one which is exempt from being scheme chargeable, and
  - (b) a scheme chargeable payment which the pension scheme is to be treated as having made by section 183 or 185 (unauthorised borrowing).
- (2) An unauthorised payment is exempt from being scheme chargeable if—
- (a) it is treated as having been made by section 173 (use of scheme assets to provide benefits) and the asset used to provide the benefit in question is not a wasting asset,
  - (b) it is a compensation payment (see section 178),
  - (c) it is made to comply with an order of a court or of a person or body with power to order the making of the payment,
  - (d) it is made on the ground that a court or any such person or body is likely to order the making of the payment (or would be were it asked to do so), or
  - (e) it is of a description prescribed by regulations made by the Board of Inland Revenue.
- (3) “Wasting asset” has the same meaning as in section 44 of TCGA 1992.
- (4) Schedule 36 contains (in Part 3) transitional provision about scheme chargeable payments.

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### *De-registration charge*

#### **242 De-registration charge**

- (1) A charge to income tax, to be known as the de-registration charge, arises where the registration of a registered pension scheme is withdrawn.
- (2) The liability to the de-registration charge is a liability of the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.
- (3) That person, or each of those persons, is liable to the de-registration charge whether or not—
  - (a) that person, and
  - (b) any other person who is liable to the de-registration charge, are resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The de-registration charge is a charge at the rate of 40% in respect of the aggregate of—
  - (a) the amount of any sums held for the purposes of the pension scheme immediately before it ceased to be a registered pension scheme, and
  - (b) the market value at that time of any assets held for the purposes of the pension scheme.

VALID FROM 06/04/2006

## CHAPTER 6

### SCHEMES THAT ARE NOT REGISTERED PENSION SCHEMES

#### *Non-UK schemes*

#### **243 Overseas pension schemes: migrant member relief**

Schedule 33 contains provision about migrant member relief in respect of contributions under overseas pension schemes.

#### **244 Non-UK schemes: application of certain charges**

Schedule 34 contains provision applying certain charges under this Part in relation to non-UK schemes.

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### *Employer-financed retirement benefit schemes*

#### **245 Restriction of deduction for contributions by employer**

- (1) Schedule 24 to the Finance Act 2003 (c. 14) (restriction of deductions for employee benefit contributions) is amended as follows.
- (2) In paragraph 1(2)(b) (when employer makes “employee benefit contribution”), after “benefits to” insert “ or in respect of present or former ”.
- (3) In sub-paragraph (1) of paragraph 2 (“qualifying benefits”), insert at the end “or  
(c) is made under an employer-financed retirement benefits scheme.”
- (4) In sub-paragraph (5) of that paragraph (when qualifying benefit treated as provided), after “payment of money” insert “ otherwise than under an employer-financed retirement benefits scheme ”.
- (5) In paragraph 8 (deductions to which Schedule does not apply), for paragraphs (b) and (c) substitute—
  - “(b) in respect of contributions under a registered pension scheme or a section 615(3) scheme,
  - (c) in respect of contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions,”.
- (6) In sub-paragraph (1) of paragraph 9 (interpretation), in the definition of “employee benefit scheme”, after “include,” insert “ present or former ”.
- (7) In that sub-paragraph, after the definition of “the employer” insert—

““employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (see section 393A of that Act);”.
- (8) In that sub-paragraph, after the definition of “qualifying expenses” insert—

““qualifying overseas pension scheme” has the same meaning as in Schedule 33 to the Finance Act 2004 (see paragraphs 5 and 6 of that Schedule);

“registered pension scheme” has the same meaning as in Part 4 of that Act (see section 150 of that Act);

“relevant migrant member” has the same meaning as in Schedule 33 to that Act (see paragraph 4 of that Schedule);

“section 615(3) scheme” means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;”.

#### **246 Restriction of deduction for non-contributory provision**

- (1) This section applies in relation to an employer’s expenses of providing benefits to or in respect of present or former employees under an employer-financed retirement benefits scheme in a case where—
  - (a) the expenses do not consist of the making of contributions under the scheme, but

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- (b) in accordance with generally accepted accounting practice they are shown in the employer's accounts.
- (2) Unless the benefits are ones in respect of which a person is, on receipt, chargeable to income tax, the expenses—
  - (a) are not deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,
  - (b) are not expenses of management of the employer for the purposes of section 75 of ICTA (expenses of management: companies with investment business), and
  - (c) are not to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) But where the benefits are ones in respect of which a person is, on receipt, chargeable to income tax—
  - (a) if the expenses are allowed to be deducted in computing the amount of the profits of the employer to be charged under Case I or II of Schedule D, they are deductible in computing the amount of the profits for the period of account in which they are paid, and
  - (b) for the purposes of the operation of section 75 or 76 of ICTA in relation to the employer, the expenses are referable to the accounting period in which they are paid.
- (4) In this section “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act).

#### **247 Abolition of income tax charge in respect of employer payments**

In Part 6 of ITEPA 2003, omit Chapter 1 (payments by employer for the provision of benefits for an employee under certain schemes to count as employment income of employee).

#### **248 Employer's cost of insuring against non-payment of benefit**

- (1) Section 307 of ITEPA 2003 (no liability to income tax in respect of chargeable benefit on provision made by employer for a retirement or death benefit) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) Subsection (1) does not apply to provision made for insuring against the risk that a retirement or death benefit under an employer-financed retirement benefits scheme cannot be paid or given because of the employer's insolvency.
  - (1B) In subsection (1A) “employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 (see section 393A).”
- (3) In subsection (2), for “subsection (1)” substitute “ this section ”.

#### **249 Taxation of non-pension benefits**

- (1) Chapter 2 of Part 6 of ITEPA 2003 (taxation of non-pension benefits from certain pension schemes) is amended as follows.

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(2) In the heading of the Chapter, for “NON-APPROVED PENSION” substitute “EMPLOYER-FINANCED RETIREMENT BENEFITS”.

(3) For section 393 substitute—

### **“393 Application of this Chapter**

- (1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.
- (2) Section 393A defines “employer-financed retirement benefits scheme” and section 393B defines “relevant benefits”.

### **393A Employer-financed retirement benefits scheme**

- (1) In this Chapter “employer-financed retirement benefits scheme” means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.
- (2) But neither—
  - (a) a registered pension scheme, nor
  - (b) a section 615(3) scheme,is an employer-financed retirement benefits scheme.
- (3) “Section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.
- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

### **393B Relevant benefits**

- (1) In this Chapter “relevant benefits” means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—
  - (a) on or in anticipation of the retirement of an employee or former employee,
  - (b) on the death of an employee or former employee,
  - (c) after the retirement or death of an employee or former employee in connection with past service,
  - (d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or
  - (e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.
- (2) But—
  - (a) benefits charged to tax under Part 9 (pension income),
  - (b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and
  - (c) excluded benefits,are not relevant benefits.



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- (3) The following are “excluded benefits”—
- (a) benefits in respect of ill-health or disablement of an employee during service,
  - (b) benefits in respect of the death by accident of an employee during service,
  - (c) benefits under a relevant life policy, and
  - (d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.

- (4) In subsection (3)(c) “relevant life policy” means—
- (a) a group life policy as defined in section 539(3) of ICTA (life policies excluded from charges on gains) with respect to which the conditions in section 539A of that Act are met,
  - (b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which condition 1 in that section would be met if it referred to that individual (rather than each of the individuals insured under the policy) and conditions 3, 4, 5 and 7 in that section are met, or
  - (c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).

- (5) In subsection (1)(e) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of WRP(A) 1999 or Article 25(1) of WRP(NI)O 1999.”

(4) Section 394 (charge on benefit) is amended as follows.

(5) After subsection (1) insert—

“(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100.”

(6) In subsection (2), for “administrator of” substitute “ person who is (or persons who are) the responsible person in relation to ”.

(7) In subsection (3), for “subsections (1) and (2)” substitute “ this section ”.

(8) For sections 395 to 397 substitute—

**“395 Reduction where employee has contributed**

- (1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.
- (2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under Case VI of Schedule D, is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.



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- (3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.
- (4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.”
- (9) In subsection (1) of section 399 (valuation of benefit in form of loan), for “administrator of” substitute “ person who is (or any of the persons who are) the responsible person in relation to ”.
- (10) In subsection (2) of that section, for “administrator” substitute “ responsible person ”.
- (11) For section 400 substitute—

#### **“399A Responsible person**

- (1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.
- (2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

##### *Head 1*

If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

##### *Head 2*

If there are one or more persons who control the management of the scheme, that person or each of those persons.

##### *Head 3*

If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

##### *Head 4*

Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

##### *Head 5*

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

#### **400 Interpretation**

In this Chapter—

“employer-financed retirement benefits scheme” has the meaning given by section 393A;

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<p>“relevant benefits” has the meaning given by section 393B; and  “responsible person” has the meaning given by section 399A.”</p>	
<p>(12) In Part 2 of Schedule 1 to ITEPA 2003 (defined expressions), insert at the appropriate places—</p>	
<p>“employer-financed retirement benefits scheme (in Chapter 2 of Part 6)</p>	<p>section 393A”</p>
<p>“relevant benefits (in Chapter 2 of Part 6)</p>	<p>section 393B”</p>
<p>“responsible person (in Chapter 2 of Part 6)</p>	<p>section 399A”.</p>

## CHAPTER 7

### COMPLIANCE

#### *Information*

VALID FROM 06/04/2006

#### **250 Registered pension scheme return**

- (1) The Inland Revenue may, in relation to any tax year, by notice require the scheme administrator of a registered pension scheme—
  - (a) to make and deliver to the Inland Revenue a return containing any information reasonably required by the notice, and
  - (b) to deliver with the return any accounts, statements or other documents relating to information contained in the return which may reasonably be required by the notice.
- (2) The information that may be required to be included in the return is any information relating to—
  - (a) contributions made under the pension scheme,
  - (b) transfers of sums or assets held for the purposes of, or representing accrued rights under, another pension scheme so as to become held for the purposes of, or to represent rights under, the pension scheme,
  - (c) income and gains derived from investments or deposits held for the purposes of the pension scheme,
  - (d) other receipts of the pension scheme,
  - (e) the sums and other assets held for the purposes of the pension scheme,
  - (f) the liabilities of the pension scheme,
  - (g) the provision of benefits by the pension scheme,

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- (h) transfers of sums or assets held for the purposes of, or representing accrued rights under, the pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme,
  - (i) other expenditure of the pension scheme,
  - (j) the membership of the pension scheme, or
  - (k) any other matter relating to the administration of the pension scheme.
- (3) The information that may be required to be included in the return may be limited to information concerning any particular arrangement or arrangements under the pension scheme.
- (4) The notice must specify the period to be covered by the return.
- (5) The period may be—
- (a) the whole or any specified part of the tax year, or
  - (b) if audited accounts of the pension scheme have been prepared for any period or periods ending in the tax year, the period or periods covered by the accounts.
- (6) “Audited accounts” means accounts audited by a person of a description specified in regulations made by the Board of Inland Revenue.
- (7) A return relating to the whole or part of, or to a period or periods ending in, a tax year must be delivered—
- (a) where the notice requiring the return is given after the 31st October in the next tax year, before the end of the period of three months beginning with the day on which the notice is given, and
  - (b) otherwise, not later than the 31st January in the next tax year (but subject as follows).
- (8) If, in a case within paragraph (b) of subsection (7), the winding-up of the pension scheme has been completed before 31st October in the next tax year, the return must be delivered before the end of the period of three months beginning with the day on which the winding-up is completed.
- (9) But subsection (8) does not apply if the end of that period is before the end of the period of three months beginning with the day on which the notice is given; and in that case the return must be delivered before the end of that period.

## 251 Information: general requirements

- (1) The Board of Inland Revenue may by regulations make provision requiring persons of a prescribed description—
- (a) to provide to the Inland Revenue, in a form specified by the Board of Inland Revenue, information of a prescribed description relating to any of the matters mentioned in subsection (2), and
  - (b) to preserve for a prescribed period any documents relating to such information.
- (2) Those matters are—
- (a) any matter relating to a registered pension scheme,
  - (b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,

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- (c) any matter relating to a pension scheme in relation to which an application for registration has been made,
  - (d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,
  - (e) the coming into operation of an employer-financed retirement benefits scheme, and
  - (f) the provision of relevant benefits under an employer-financed retirement benefits scheme.
- (3) In subsection (2)—
- “employer-financed retirement benefits scheme”, and
  - “relevant benefits”,
- have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).
- (4) The Board of Inland Revenue may by regulations make provision—
- (a) requiring scheme administrators of registered pension schemes or other persons of a prescribed description to provide information of a prescribed description to persons of such of the descriptions mentioned in subsection (5) as are prescribed, or
  - (b) requiring persons of such of the descriptions specified in subsection (5) as are prescribed to provide information of a prescribed description to the scheme administrators of registered pension schemes.
- (5) Those persons are—
- (a) members of a registered pension scheme,
  - (b) persons who have ceased to be members of a registered pension scheme,
  - (c) persons to whom benefits under a registered pension scheme are being, or have been, provided,
  - (d) the personal representatives of any person within paragraphs (a) to (c), and
  - (e) insurance companies who pay annuities purchased with sums or assets held for the purposes of registered pension schemes.
- (6) “Prescribed”, in relation to regulations, means prescribed by the regulations.

VALID FROM 06/04/2006

## **252 Notices requiring documents or particulars**

- (1) The Inland Revenue may by notice require any person of a description prescribed by regulations made by the Board of Inland Revenue—
- (a) to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person’s possession or power relating to any of the matters mentioned in subsection (3) which the Inland Revenue may reasonably require, and
  - (b) to provide to the Inland Revenue any particulars relating to any of those matters which the Inland Revenue may reasonably require.
- (2) The Inland Revenue may by notice require any other person to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person’s possession or power which—

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- (a) relate to any of the matters mentioned in subsection (3), and
  - (b) were created not more than six years before the day on which the notice is given,
- and which the Inland Revenue may reasonably require.
- (3) The matters referred to in subsections (1) and (2) are—
- (a) any matter relating to a registered pension scheme,
  - (b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,
  - (c) any matter relating to a pension scheme in relation to which an application for registration has been made,
  - (d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,
  - (e) the coming into operation of an employer-financed retirement benefits scheme, and
  - (f) the provision of relevant benefits under an employer-financed retirement benefits scheme.
- (4) In subsection (3)—
- “employer-financed retirement benefits scheme”, and
  - “relevant benefits”,
- have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).
- (5) A notice under this section must specify the period within which it is to be complied with; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.
- (6) A notice under subsection (2) must specify the pension scheme or employer-financed retirement benefits scheme to which it relates.
- (7) The Inland Revenue must notify the scheme administrator of the pension scheme, or the responsible person in relation to the employer-financed retirement benefits scheme, to which such a notice relates that the notice has been given no later than the end of the period of 30 days beginning with the day on which it is given.
- (8) In subsection (7) “responsible person” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act).
- (9) A person may comply with a notice under this section requiring the production of a document by producing a copy of the document.
- (10) But where a person produces a copy of a document in compliance with a notice under this section the Inland Revenue may by notice require the production of the original for inspection within a period specified in the notice; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.
- (11) The Inland Revenue may take copies of, or make extracts from, any document produced in compliance with a notice under this section.
- (12) A notice under this section does not require a person—
- (a) to produce or make available for inspection any document, or
  - (b) to provide any particulars,

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relating to any pending appeal by the person relating to tax.

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### **253 Appeal against notices**

- (1) The person to whom a notice under section 252(1) or (2) (notices requiring documents or particulars) is given may appeal against any requirement imposed by the notice.
- (2) The appeal must be brought within the period of 30 days beginning with the date on which the notice is given.
- (3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a requirement imposed by a notice must be brought within the period of 30 days beginning with the day on which the notice was given.
- (6) The Commissioners before whom an appeal under this section is brought must consider whether the production of the document, or provision of the particulars, to which the appeal relates was reasonably required by the Inland Revenue.
- (7) If they decide that it was, they must confirm the notice so far as relating to that requirement.
- (8) If they decide that it was not, they must set aside the notice so far as relating to that requirement.
- (9) If the notice is confirmed it has effect in relation to the requirement to which the appeal relates as if it specified as the period within which it must be complied with the period of 30 days beginning with the day on which the appeal was determined.
- (10) The determination of the Commissioners is final and conclusive.

VALID FROM 06/04/2006

### *Accounting and assessment*

### **254 Accounting for tax by scheme administrators**

- (1) A scheme administrator of a registered pension scheme must make returns to the Inland Revenue of the income tax to which the scheme administrator is liable under this Part.

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- (2) A return is to be made for each period of three months ending with 31st March, 30th June, 30th September or 31st December if tax has been charged on the scheme administrator by virtue of this Part in that period.
- (3) A return for any period must be made before the end of the period of 45 days beginning with the day immediately following the end of that period.
- (4) A return must—
  - (a) show the income tax to which the scheme administrator is liable, and
  - (b) include such particulars of the events or other circumstances giving rise to the liability (including particulars as to the persons to whom the events or other circumstances relate) as are required to be included in returns under this section by regulations made by the Board of Inland Revenue.
- (5) The income tax required to be shown in a return is due at the time by which the return is to be made and is payable without the making of an assessment.
- (6) The Board of Inland Revenue may by regulations make provision for and in connection with—
  - (a) the charging of interest on tax due under this section which is not paid on or before the due date,
  - (b) the making of amended returns by scheme administrators in the event of error in a return under this section,
  - (c) the making of assessments, repayments or adjustments in cases where the correct tax due under this section has not been paid on or before the due date, and
  - (d) otherwise for supplementing this section.
- (7) The regulations may, in particular—
  - (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modifications).
- (8) References in this section to the income tax to which a scheme administrator is liable under this Part do not include any to which the scheme administrator is liable under section 239 (scheme sanction charge).
- (9) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.

## **255 Assessments under this Part**

- (1) The Board of Inland Revenue may by regulations make provision for and in connection with the making of assessments in respect of—
  - (a) the unauthorised payments charge,
  - (b) the unauthorised payments surcharge,
  - (c) liability to the lifetime allowance charge under section 217(2) (person to whom lump sum death benefit paid),
  - (d) the scheme sanction charge,
  - (e) liability under section 272 (trustees etc. liable as scheme administrator),



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- (f) liability under section 273 (member liable as scheme administrator), and
  - (g) liability under section 394 of ITEPA 2003 (benefit under employer-financed retirement benefits scheme: charge on responsible person).
- (2) The provision that may be made by the regulations includes (in particular) provision for the charging of interest on tax due under such assessments which remains unpaid.
- (3) The regulations may, in particular—
- (a) modify the operation of any provision of the Tax Acts, or
  - (b) provide for the application of any provision of the Tax Acts (with or without modification).

VALID FROM 06/04/2006

### *Registration regulations*

#### **256 Enhanced lifetime allowance regulations**

- (1) This section applies to regulations made by the Board of Inland Revenue under—
- (a) section 220(5) (lifetime allowance enhancement: registration of pension credits),
  - (b) section 221(6) (lifetime allowance enhancement: individuals who are not always relevant UK individuals),
  - (c) section 224(9) (lifetime allowance enhancement: transfers from recognised overseas pension scheme),
  - (d) paragraph 7(1)(b) of Schedule 36 (lifetime allowance enhancement: primary protection),
  - (e) paragraph 12(1) of that Schedule (lifetime allowance: enhanced protection), and
  - (f) paragraph 18(6) of that Schedule (lifetime allowance enhancement: pre-commencement pension credits).
- (2) The regulations to which this section applies are referred to in this Part as “enhanced lifetime allowance regulations”.
- (3) Enhanced lifetime allowance regulations may include any provision that appears appropriate for securing that the correct tax is charged—
- (a) by way of the lifetime allowance charge in respect of amounts crystallised by benefit crystallisation events, and
  - (b) in respect of the payment of lump sums by registered pension schemes.
- (4) Enhanced lifetime allowance regulations may, for that purpose, in particular contain provision—
- (a) requiring any person to produce or make available documents, produce certificates or provide information, and
  - (b) for the review from time to time of any matter registered in accordance with the regulations.



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## Penalties

### 257 Registered pension scheme return

- (1) If the scheme administrator of a registered pension scheme fails to comply with a notice under section 250 (registered pension scheme return), the scheme administrator is liable to a penalty of £100.
- (2) If the failure continues after a penalty is imposed under subsection (1), the scheme administrator is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.
- (4) If the scheme administrator of a registered pension scheme fraudulently or negligently—
  - (a) makes an incorrect return required by a notice under section 250, or
  - (b) delivers any incorrect accounts, statements or other documents with such a return,the scheme administrator is liable to a penalty not exceeding £3,000.

### 258 Information required by regulations

- (1) In section 98 of TMA 1970 (penalties for failure to provide information and providing false information), in the second column of the Table, insert at the appropriate place— “ regulations under section 251(1)(a) or (4) of the Finance Act 2004; ”.
- (2) A person who fails to comply with regulations under section 251(1)(b) (preservation of documents) is liable to a penalty not exceeding £3,000.

### 259 Documents and particulars required by notice

- (1) A person who fails to comply with a notice under section 252 (notice requiring documents or particulars) is liable to a penalty not exceeding £300.
- (2) If the failure continues after a penalty is imposed under subsection (1), the person is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.
- (4) If a person fraudulently or negligently—
  - (a) produces or makes available for inspection any incorrect documents, or
  - (b) provides any incorrect particulars,

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in response to a notice under section 252, the person is liable to a penalty not exceeding £3,000.

## 260 Accounting return

- (1) If the scheme administrator of a registered pension scheme fails to make a return for a quarter in accordance with section 254 (return of tax charged), the scheme administrator is liable—
  - (a) to a penalty or penalties of the relevant quarterly amount for each quarter (or part of a quarter) for which the failure continues, excluding any quarter after the fourth or for which a penalty under this paragraph has already been imposed, and
  - (b) if the failure continues beyond the fourth quarter (whether or not any penalty under paragraph (a) is imposed), to a penalty not exceeding the amount of income tax to which the scheme administrator is liable (otherwise than under section 239: scheme sanction charge) for the quarter for which the return is not made.
- (2) In subsection (1)—
 

“quarter” means a period of three months ending with 31st March, 30th June, 30th September or 31st December, and

“the relevant quarterly amount”—

  - (a) if the number of persons in respect of whom particulars should be included in the return by virtue of section 254(4)(b) is ten or less, is £100, and
  - (b) if that number is greater than ten, is £100 for each ten such persons and an additional £100 where that number is not a multiple of ten.
- (3) The Treasury may from time to time by order amend the amounts specified in the definition of “the relevant quarterly amount” in subsection (2).
- (4) No penalty under subsection (1)(b) may be imposed unless—
  - (a) the amount of income tax to which the scheme administrator is liable (otherwise than under section 239) for the quarter concerned has been determined by the Inland Revenue, and
  - (b) the scheme administrator has been notified of that amount.
- (5) In section 100(6)(a) of TMA 1970 (excessive penalty), after “1998” insert “ or section 260(1)(b) of the Finance Act 2004 ”.
- (6) If the scheme administrator of a registered pension scheme fraudulently or negligently makes an incorrect return under section 254, the scheme administrator is liable to a penalty not exceeding the difference between—
  - (a) the amount of the tax shown in the return, and
  - (b) the amount of the tax which should have been shown in the return,
 or, if no tax is shown in the return, the amount of the tax which should have been shown in the return.
- (7) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was or the persons who were the scheme administrator immediately before the registration was withdrawn.

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## **261 Enhanced lifetime allowance regulations: documents and information**

- (1) This section applies where an individual fraudulently or negligently—
  - (a) produces or makes available an incorrect document, or produces an incorrect certificate, in connection with any matter registered in accordance with enhanced lifetime allowance regulations, or
  - (b) provides false information in connection with any such matter, and the condition in subsection (2) is met.
- (2) The condition is that—
  - (a) the amount of the individual's lifetime allowance at the time which is relevant for the purposes of this paragraph, or
  - (b) the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of this paragraph,would be greater than it actually is were the document or certificate correct or the information true.
- (3) The individual is liable to a penalty not exceeding 25% of the relevant excess.
- (4) In a case within paragraph (a) of subsection (2), the relevant excess is the difference between what would be the amount of the individual's lifetime allowance at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true) and whichever is the higher of—
  - (a) the actual amount of the individual's lifetime allowance at that time, and
  - (b) the standard lifetime allowance at that time.
- (5) The time which is relevant for the purposes of paragraph (a) of subsection (2)—
  - (a) where a benefit crystallisation event has occurred in relation to the individual since the document was produced or made available, the certificate produced or the information provided (but before a penalty under this section is imposed), is the time when the benefit crystallisation event occurred, and
  - (b) otherwise, is the time when the document was produced or made available, the certificate produced or the information provided.
- (6) In a case within paragraph (b) of subsection (2), the relevant excess is the difference between—
  - (a) what would be the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true), and
  - (b) the actual amount at that time of the pension commencement lump sums to which the individual may be entitled.
- (7) The time which is relevant for the purposes of paragraph (b) of subsection (2) is the time when the document was produced or made available, the certificate produced or the information provided.

## **262 Enhanced lifetime allowance regulations: failures to comply**

An individual who fails—

- (a) to produce or make available any document required to be produced by enhanced lifetime allowance regulations,

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- (b) to produce any certificate required to be produced by enhanced lifetime allowance regulations, or
  - (c) to provide any information required to be provided by enhanced lifetime allowance regulations,
- is liable to a penalty not exceeding £3,000.

### **263 Lifetime allowance enhanced protection: benefit accrual**

- (1) This section applies where—
- (a) paragraph 12 of Schedule 36 (lifetime allowance charge: enhanced protection) applies in relation to an individual, and
  - (b) relevant benefit accrual occurs in relation to the individual (as to which see paragraph 13 of that Schedule).
- (2) If the individual fails to notify the Inland Revenue of the relevant benefit accrual within the period of 90 days beginning with the day on which it occurs, the individual is liable to a penalty not exceeding £3,000.

### **264 False statements etc**

- (1) A person who fraudulently or negligently makes a false statement or representation is liable to a penalty not exceeding £3,000 if, in consequence of the statement or representation—
- (a) that person or any other person obtains relief from, or repayment of, tax chargeable under this Part, or
  - (b) a registered pension scheme makes a payment which is an unauthorised payment.
- (2) A person who assists in or induces the preparation of any document which the person knows—
- (a) is incorrect, and
  - (b) will, or is likely to, cause a registered pension scheme to make an unauthorised payment,
- is liable to a penalty not exceeding £3,000.

### **265 Winding-up to facilitate payment of lump sums**

- (1) This section applies where the winding-up of a registered pension scheme has begun and the Inland Revenue considers the pension scheme is being wound up wholly or mainly for the purpose specified in subsection (2).
- (2) That purpose is facilitating the payment of winding-up lump sums or winding-up lump sum death benefits (or both) under the pension scheme.
- (3) The scheme administrator is liable to a penalty not exceeding the relevant amount.
- (4) The relevant amount is £3,000 in respect of—
- (a) each member to whom a winding-up lump sum is paid under the pension scheme, and
  - (b) each member in respect of whom a winding-up lump sum death benefit is paid under the pension scheme.

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## 266 Transfers to insured schemes

- (1) This section applies where sums held for the purposes of, or representing accrued rights under, a registered pension scheme (“the transferor scheme”) are transferred so as to become held for the purposes of, or to represent rights under, a registered pension scheme that is an insured scheme (“the transferee scheme”).
- (2) The scheme administrator of the transferor scheme is liable to a penalty not exceeding £3,000 unless the sums are transferred either to the scheme administrator of the transferee scheme or to a relevant insurance company.
- (3) In this section—
  - “insured scheme” means a pension scheme all the income and other assets of which are invested in policies of insurance, and
  - “relevant insurance company” means an insurance company that issued any of the policies of insurance.

VALID FROM 06/04/2006

### *Discharge of tax liability: good faith*

## 267 Lifetime allowance charge

- (1) This section applies where the scheme administrator of a registered pension scheme is liable to the lifetime allowance charge in respect of a benefit crystallisation event.
- (2) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator’s liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (3).
- (3) The ground is that—
  - (a) the scheme administrator reasonably believed that there was no liability to the lifetime allowance charge in respect of the benefit crystallisation event, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the lifetime allowance charge in respect of the benefit crystallisation event.
- (4) On receiving an application under subsection (2), the Inland Revenue must decide whether to discharge the scheme administrator’s liability to the lifetime allowance charge in respect of the benefit crystallisation event.
- (5) The scheme administrator may apply to the Inland Revenue for the discharge of part of the scheme administrator’s liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (6).
- (6) The ground is that—
  - (a) the scheme administrator reasonably believed that the amount of the lifetime allowance charge in respect of the benefit crystallisation event was less than the actual amount, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to an amount (“the excess amount”)

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equal to the difference between the amount which the scheme administrator believed to be the amount of the charge and the actual amount.

- (7) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the lifetime allowance charge in respect of the excess amount (or part of the excess amount).
- (8) The discharge of the scheme administrator's liability to the lifetime allowance charge (or to the excess amount or part of the excess amount) does not affect the liability of any other person to the lifetime allowance charge.
- (9) The Inland Revenue must notify the scheme administrator of the decision on an application under this section.
- (10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

#### **268 Unauthorised payments surcharge and scheme sanction charge**

- (1) This section applies where—
  - (a) a person is liable to the unauthorised payments surcharge in respect of an unauthorised payment, or
  - (b) the scheme administrator of a registered pension scheme is liable to the scheme sanction charge in respect of a scheme chargeable payment.
- (2) The person liable to the unauthorised payments surcharge may apply to the Inland Revenue for the discharge of the person's liability to the unauthorised payments surcharge in respect of the unauthorised payment on the ground mentioned in subsection (3).
- (3) The ground is that in all the circumstances of the case, it would not be just and reasonable for the person to be liable to the unauthorised payments surcharge in respect of the payment.
- (4) On receiving an application by a person under subsection (2) the Inland Revenue must decide whether to discharge the person's liability to the unauthorised payments surcharge in respect of the payment.
- (5) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the scheme sanction charge in respect of a scheme chargeable payment on the ground mentioned in subsection (6) or (7).
- (6) In the case of a scheme chargeable payment which is treated as being an unauthorised member payment by section 172 (assignment), the ground is that, in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge.
- (7) In any other case, the ground is that—
  - (a) the scheme administrator reasonably believed that the unauthorised payment was not a scheme chargeable payment, and
  - (b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge in respect of the unauthorised payment.



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- (8) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the scheme sanction charge in respect of the unauthorised payment.
- (9) The Inland Revenue must notify the applicant of the decision on an application under this section.
- (10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

### **269 Appeal against decision on discharge of liability**

- (1) This section applies where the Inland Revenue—
  - (a) decides to refuse an application under section 267(2) (discharge of liability to lifetime allowance charge) or section 268 (discharge of liability to unauthorised payments surcharge or scheme sanction charge), or
  - (b) on an application under section 267(5), decides to refuse the application or to discharge the applicant's liability to the lifetime allowance charge in respect of part only of the excess amount.
- (2) The applicant may appeal against the decision.
- (3) The appeal is to the General Commissioners, except that the person may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the applicant was given notification of the decision.
- (6) The Commissioners before whom an appeal under subsection (1)(a) is brought must consider whether the applicant's liability to the lifetime allowance charge, unauthorised payments surcharge or scheme sanction charge ought to have been discharged.
- (7) If they consider that the applicant's liability ought not to have been discharged, they must dismiss the appeal.
- (8) If they consider that the applicant's liability ought to have been discharged, they must grant the application.
- (9) The Commissioners before whom an appeal under subsection (1)(b) is brought must consider whether the applicant's liability to the lifetime allowance charge ought to have been discharged in respect of the excess amount or a greater part of the excess amount.
- (10) If they consider that the applicant's liability ought not to have been discharged in respect of the excess amount or a greater part of the excess amount, they must dismiss the appeal.

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- (11) If they consider that the applicant's liability ought to have been discharged in respect of the excess amount or a greater part of the excess amount, they must discharge the applicant's liability in respect of the excess amount or that part of the excess amount.

VALID FROM 06/04/2006

*Scheme administrator*

**270 Meaning of “scheme administrator”**

- (1) References in this Part to the scheme administrator, in relation to a pension scheme, are to the person who is, or persons who are, appointed in accordance with the rules of the pension scheme to be responsible for the discharge of the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part.
- (2) But a person cannot be the person who is, or one of the persons who are, the scheme administrator of a pension scheme unless the person—
  - (a) is resident in the United Kingdom or another state which is a member State or a non-member EEA State, and
  - (b) has made the required declaration to the Inland Revenue.
- (3) “The required declaration” is a declaration that the person—
  - (a) understands that the person will be responsible for discharging the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part, and
  - (b) intends to discharge those functions at all times, whether resident in the United Kingdom or another state which is a member State or a non-member EEA State.
- (4) “Non-member EEA State” means a State 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) but which is not a member State.

**271 Liability of scheme administrator**

- (1) Any liability of a person who is, or of any of the persons who are, the scheme administrator of a registered pension scheme ceases to be a liability of that person on the person ceasing to be, or to be one of the persons who is, the scheme administrator of the pension scheme.

This subsection does not apply to a liability to pay a penalty and is subject to subsection (4).

- (2) Where a person becomes, or becomes one of the persons who is, the scheme administrator of a registered pension scheme, the person assumes any existing liabilities of the scheme administrator of the pension scheme, other than any liability to pay a penalty.



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- (3) Subsection (4) applies where, on the person who is or the persons who are the scheme administrator of a registered pension scheme ceasing to be the scheme administrator, there is no scheme administrator of the pension scheme.
- (4) Any liability of the person or persons as scheme administrator remains a liability of that person or those persons as if still the scheme administrator (unless dead or having ceased to exist) until another person becomes, or other persons become, the scheme administrator of the pension scheme.
- (5) But a person who retains, or persons who retain, any liability by virtue of subsection (4) may apply to the Inland Revenue to be released from the liability.
- (6) On receipt of the application the Inland Revenue must decide whether or not to release the applicant or applicants from the liability and must notify the applicant, or each of the applicants, of the decision.
- (7) If the decision is not to release the applicant or applicants from the liability the applicant or applicants may appeal against the decision.
- (8) The appeal is to the General Commissioners, except that the applicant or applicants may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (9) The appeal must be brought within the period of 30 days beginning with the day on which the applicant was notified of the decision.
- (10) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.
- (11) The Commissioners before whom an appeal under this section is brought must consider whether the applicant or applicants ought to have been released from the liability.
- (12) If they decide that the applicant or applicants ought not to have been released from the liability, they must dismiss the appeal.
- (13) If they decide that the applicant or applicants ought to have been released from the liability, the applicant is, or applicants are, to be treated as having been released from the liability (but subject to any further appeal or any determination on, or in consequence of, a case stated).

## **272 Trustees etc. liable as scheme administrator**

- (1) This section applies in relation to a registered pension scheme if—
  - (a) there is no scheme administrator of the pension scheme and no-one who remains subject to the liabilities of the scheme administrator by virtue of section 271(4) (continuation of liability where no scheme administrator),
  - (b) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject cannot be traced, or
  - (c) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject are in serious default.

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- (2) Any person who assumes liability by reason of this section applying in relation to the pension scheme—
- (a) is liable to pay any tax (and any interest on tax) due from the scheme administrator of the pension scheme by virtue of this Part, and
  - (b) is responsible for the discharge of all other obligations imposed on the scheme administrator of the pension scheme by or under this Part.
- (3) In subsection (2)—
- (a) the references in paragraph (a) to tax, and interest on tax, include any that has become due before this section applied in relation to the pension scheme and remains unpaid, and
  - (b) the reference in paragraph (b) to obligations includes any that have become due before this section applied in relation to the pension scheme and remain unsatisfied, other than any liability to pay a penalty which has become due before this section so applied.
- (4) The following heads specify the persons who assume liability by reason of this section applying in relation to the pension scheme; but if—
- (a) a person assumes, or persons assume, liability by virtue of being specified under one head, and
  - (b) that person, or any of those persons, can be traced and is not in default, no-one assumes liability by virtue of being specified under a later head.

*Head 1*

If there are one or more trustees of the pension scheme who are resident in the United Kingdom, that trustee or each of those trustees.

*Head 2*

If there are one or more persons who control the management of the pension scheme, that person or each of those persons.

*Head 3*

If alive or still in existence, the person, or any of the persons, who established the pension scheme and any person by whom that person, or any of those persons, has been directly or indirectly succeeded in relation to the provision of benefits under the pension scheme.

*Head 4*

If the pension scheme is an occupational pension scheme, any sponsoring employer.

*Head 5*

If there are one or more trustees of the pension scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

- (5) Where a person assumes liability by reason of this section applying in relation to the pension scheme, the Inland Revenue must, as soon as is reasonably practicable, notify the person of that fact; but failure to do so does not affect the person's liability.
- (6) For the purposes of this section a person is in default if the person—

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- (a) has failed to pay all or any of the tax (or interest on tax) due from the person by virtue of this Part, or
  - (b) has failed to discharge any other obligation imposed on the person by or under this Part,
- and a person in default is in serious default if the Inland Revenue considers the failure to be of a serious nature.

### 273 Members liable as scheme administrator

- (1) This section applies in relation to a registered pension scheme if—
- (a) a person has, or persons have, assumed liability by reason of section 272 (trustees etc.) applying in relation to the pension scheme,
  - (b) the person has, or the persons have, become liable to pay tax (or interest on tax) which became due by virtue of section 239 (scheme sanction charge) or section 242 (de-registration charge) before section 272 applied in relation to the pension scheme,
  - (c) that person, or each of those persons, has failed (in whole or in part) to satisfy the liability, and
  - (d) that person, or each of those persons, has either died or ceased to exist or is a person in whose case the Inland Revenue considers the person's failure to satisfy the liability to be of a serious nature.
- (2) Any person who was a member of the pension scheme at any time during the relevant three-year period is liable to pay the appropriate share of the unpaid amount if—
- (a) any of the conditions in subsection (5) is met, and
  - (b) the Inland Revenue notifies the person of the person's liability to do so.
- (3) "The relevant three-year period" is the period of three years ending with the date on which the liability to pay the tax arose.
- (4) The "appropriate share of the unpaid amount", in the case of a person, is—

$$\frac{AAP}{AA} \times UT$$

where—

AA is an amount equal to aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the liability to pay the tax arose,

AAP is an amount equal to so much of AA as is held for the purposes of such of the arrangements under the pension scheme as relate to the person or a person connected with the person, and

UT is so much of the tax (and any interest on it) as remains unpaid.

- (5) The conditions referred to in subsection (2)(a) are—
- (a) that the pension scheme was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc.) and was not an occupational pension scheme,

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- (b) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant personal pension contributions made by or in respect of the person,
  - (c) that the pension scheme was an occupational pension scheme and at any time during the relevant three-year period the person was a controlling director of a company that was a sponsoring employer, and
  - (d) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant controlling director contributions made by or in respect of the person.
- (6) A notification under subsection (2)(b) may be included in an assessment in respect of a liability under this section; and such an assessment made in relation to an amount is not out of time if made within the period of three years beginning with the date on which the person assessed first became liable to pay the amount.
- (7) “Relevant personal pension contributions” means contributions under a pension scheme (whether or not the pension scheme from which the transfer value was received) which was established by a person or body specified in section 154(1)(a) to (g) and was not an occupational pension scheme.
- (8) “Relevant controlling director contributions” means contributions under an occupational pension scheme (whether or not the pension scheme from which the transfer value was received) made by reference to service (or remuneration in respect of service) as a controlling director of a company that was a sponsoring employer.
- (9) A person is a “controlling director” of a company if the person is a director of the company and is within section 417(5)(b) of ICTA (director able to control 20% of ordinary share capital) in relation to the company.
- (10) References to receipt of a transfer value by the pension scheme are to the transfer, so as to become held for the purposes of or to represent rights under the pension scheme, of any sums or assets held for the purposes of or representing accrued rights under any other pension scheme.
- (11) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## 274 Supplementary

- (1) The fact that any person is liable to pay any tax or interest, or is responsible for the discharge of any other obligation, under section 272 (trustees etc.) or section 273 (members) does not relieve any other person of any liability to pay the tax or interest, or any obligation to discharge the obligation, arising—
- (a) by reason of that other person being, or being one of the persons who is, the scheme administrator of the pension scheme, or
  - (b) under section 271(4) (continuation of liability where no scheme administrator).
- (2) Where a liability imposed on the scheme administrator of a registered pension scheme falls to be satisfied by two or more persons (whether or not they constitute the scheme administrator), they are jointly and severally liable.
- (3) No liability to pay tax or interest, or other obligation, of any person in relation to a registered pension scheme arising—

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- (a) by reason of the person being, or being one of the persons who is, the scheme administrator of the pension scheme concerned, or
  - (b) under section 271(4), 272 or 273,
- is affected by the termination of the pension scheme or by its ceasing to be a registered pension scheme.

## CHAPTER 8

### SUPPLEMENTARY

#### *Interpretation*

#### **275 Insurance company**

- (1) In this Part “insurance company” means—
- (a) a person who has permission under Part 4 of FISMA 2000 to effect or carry out contracts of long-term insurance, or
  - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to FISMA 2000 (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.
- (2) “Contracts of long-term insurance” means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).

#### **276 Relevant valuation factor**

- (1) For the purposes of this Part the relevant valuation factor in relation to any registered pension scheme, or any arrangement under a registered pension scheme, is 20.
- (2) But the Inland Revenue and the scheme administrator of any registered pension scheme may agree that the relevant valuation factor in relation to the pension scheme, or any arrangement under the pension scheme, is to be a number greater than 20.

#### **277 Valuation assumptions**

For the purposes of this Part the valuation assumptions in relation to a person, benefits and a date are—

- (a) if the person has not reached such age (if any) as must have been reached to avoid any reduction in the benefits on account of age, that the person reached that age on the date, and
- (b) that the person’s right to receive the benefits had not been occasioned by physical or mental impairment.

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## 278 Market value

- (1) For the purposes of this Part the market value of an asset held for the purposes of a pension scheme is to be determined in accordance with section 272 of TCGA 1992.
- (2) Where an asset held for the purposes of a pension scheme is a right or interest in respect of any money lent (directly or indirectly) to any relevant associated person, the value of the asset is to be treated as being the amount owing (including any unpaid interest) on the money lent.
- (3) The following are “relevant associated persons”—
  - (a) any employer who has at any time (whether or not before the making of the loan) made contributions under the pension scheme,
  - (b) any company connected (at the time of the making of the loan or subsequently) with any such employer,
  - (c) any person who has at any time (whether or not before the making of the loan) been a member of the pension scheme, and
  - (d) any person connected (at the time of the making of the loan or subsequently) with any such person.
- (4) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## 279 Other definitions

- (1) In this Part—
  - “the Board of Inland Revenue” means the Commissioners of Inland Revenue,
  - “charity” has the same meaning as in section 506 of ICTA,
  - “employee” and “employer” have the same meaning as in the employment income Parts of ITEPA 2003 (see sections 4 and 5 of that Act) but include (respectively) a former employee and a former employer (and “employment” is to be read accordingly),
  - “the Inland Revenue” means any officer of the Board of Inland Revenue,
  - “normal minimum pension age” means—
    - (a) before 6th April 2010, 50, and
    - (b) on and after that date, 55,
  - “pension credit” and “pension debit” have the same meaning as in Chapter 1 of Part 4 of WRPA (see section 46(1) of that Act) or Chapter 1 of Part 5 of WRP(NI)O 1999 (see Article 43(1) of that Order),
  - “pension sharing order or provision” means any order or provision mentioned in section 28(1) of WRPA 1999 or Article 25(1) of WRP(NI)O 1999,
  - “personal representatives”, in relation to a person who has died, means—
    - (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and
    - (b) in a country or territory outside the United Kingdom, the persons having functions under its law equivalent to those of administering the estate of the deceased,
  - “retail prices index” means the general index (for all items) published by the Office for National Statistics or, if that index is not published for a relevant month, any substituted index or index figures published by that Office,

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“tax year” means, in relation to income tax, a year for which any Act provides for income tax to be charged, and

“the tax year 2006-07” means the tax year beginning on 6th April 2006 (and any corresponding expression in which two years are simultaneously mentioned is to be read in the same way).

- (2) In this Part references to payments made, or benefits provided, by a pension scheme are to payments made or benefits provided from sums or assets held for the purposes of the pension scheme.
- (3) For the purposes of this Part the sums and assets held for the purposes of an arrangement under a pension scheme are so much of the sums and assets held for the purposes of the pension scheme under which the arrangement is made as are properly attributable, in accordance with the provisions of the pension scheme and any just and reasonable apportionment, to the arrangement.

## 280 Abbreviations and general index

(1) In this Part—

- “NIA 1965” means the National Insurance Act 1965 (c. 51),  
“NIA(NI) 1966” means the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)),  
“TMA 1970” means the Taxes Management Act 1970 (c. 9),  
“ICTA 1970” means the Income and Corporation Taxes Act 1970 (c. 10),  
“ICTA” means the Income and Corporation Taxes Act 1988 (c. 1),  
“SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4),  
“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),  
“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12),  
“WRPA 1999” means the Welfare Reform and Pensions Act 1999 (c. 30),  
“WRP(NI)O 1999” means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/ 3147 (N.I. 11)),  
“FISMA 2000” means the Financial Services and Markets Act 2000 (c. 8),  
...  
“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003 (c. 1), [<sup>F40</sup>and  
“ITTOIA 2005” means the Income Tax (Trading and Other Income Act) 2005.]

(2) In this Part the following expressions are defined or otherwise explained by the provisions indicated—

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accounting period	section 834(1) of ICTA
active member (of a pension scheme)	section 151(2)
active membership period (in sections 221 to 223)	section 221(4) and (5)
amount crystallised	section 216
annual allowance	section 228

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annual allowance charge	section 227(1)
annuity protection lump sum death benefit	paragraph 16 of Schedule 29
arrangement	section 152(1)
authorised surplus payment	section 177
available (in relation to a person's lifetime allowance)	section 219
basic rate	section 832(1) of ICTA
basic rate limit	section 832(1) of ICTA
benefits (provided by pension scheme)	section 279(2)
benefit crystallisation event	section 216
the Board of Inland Revenue	section 279(1)
borrowing (in Chapter 3)	section 163
cash balance arrangement	section 152(3)
cash balance benefits	section 152(5)
chargeable gain	section 832(1) of ICTA
charity	section 279(1)
company	section 832(1) of ICTA
compensation payment	section 178
contribution	sections 188(4) to (6) and 195
defined benefits	section 152(7)
defined benefits arrangement	section 152(6)
defined benefits lump sum death benefit	paragraph 13 of Schedule 29
dependant's alternatively secured pension fund	paragraph 25 of Schedule 28
dependants' scheme pension	paragraph 16 of Schedule 28
dependant's unsecured pension fund	paragraph 22 of Schedule 28
employee and employer (and employment)	section 279(1)
employment income	section 7(2) of ITEPA 2003
enhanced lifetime allowance regulations	section 256(2)
entitled (in relation to a lump sum)	section 166(2)
entitled (in relation to a pension)	section 165(3)
higher rate	section 832(1) of ICTA
hybrid arrangement	section 152(8)
ill-health condition	paragraph 1 of Schedule 28



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the individual (in sections 215 to 219)	section 214(5)
the Inland Revenue	section 279(1)
insurance company	section 275
investments (in relation to a pension scheme)	section 186(3) and (4)
liability (in Chapter 3)	section 163
lifetime allowance (in relation to a person)	section 218
lifetime allowance charge	section 214(1)
lifetime allowance enhancement factors	section 218(5)
lifetime allowance excess lump sum	paragraph 11 of Schedule 29
lifetime annuity	paragraph 3 of Schedule 28
loan (in Chapter 3)	section 162
lump sum death benefit	section 168(2)
market value	section 278
member (of a pension scheme)	section 151(1)
member's alternatively secured pension fund	paragraph 11 of Schedule 28
member's unsecured pension fund	paragraph 8 of Schedule 28
money purchase arrangement	section 152(2)
money purchase benefits	section 152(4)
net pay pension scheme	section 191(9)
normal minimum pension age	section 279(1)
occupational pension scheme	section 150(5)
overseas arrangement active membership period (in sections 224 to 226)	section 224(7) and (8)
overseas pension scheme	section 150(7)
payment (in Chapter 3)	section 161
payments (made by pension scheme)	section 279(2)
pension	section 165(2)
pension commencement lump sum	paragraph 1 of Schedule 29
pension credit and pension debit	section 279(1)
pension input amount	section 229
pension input period	section 238
pension protection lump sum death benefit	paragraph 14 of Schedule 29

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pension scheme	section 150(1)
the pension scheme (in sections 215 to 219)	section 214(5)
pension sharing order or provision	section 279(1)
pensioner member (of a pension scheme)	section 151(3)
period of account	section 832(1) of ICTA
personal representatives	section 279(1)
property investment LLP	section 842B of ICTA
public service pension scheme	section 150(3)
qualifying recognised overseas pension scheme	section 169(2)
recognised overseas pension scheme	section 150(8)
recognised overseas scheme arrangement (in sections 224 to 226)	section 224(2) and (3)
registered pension scheme	section 150(2)
relevant overseas individual	section 221(3)
relevant UK earnings	section 189(2)
relevant UK individual	section 189
relevant valuation factor	section 276
relievable pension contributions	section 188(2) and (3)
retail prices index	section 279(1)
scheme administrator	section 270 (but see also sections 271 to 274)
scheme chargeable payment	section 241
scheme manager	section 169(3)
scheme pension	paragraph 2 of Schedule 28
scheme sanction charge	section 239(1)
serious ill-health lump sum	paragraph 4 of Schedule 29
short service refund lump sum	paragraph 5 of Schedule 29
short service refund lump sum charge	section 205(1)
special lump sum death benefits charge	section 206(1)
sponsoring employer	section 150(6)
standard lifetime allowance	section 218(2) and (3)
sums and assets held for the purposes of an arrangement	section 279(3)
tax year	section 279(1)

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the tax year 2006-07 etc.	section 279(1)
total income	section 835 of ICTA
total pension input amount	section 229
transfer lump sum death benefit	paragraph 19 of Schedule 29
trivial commutation lump sum	paragraph 7 of Schedule 29
unauthorised employer payment	section 160(4)
unauthorised member payment	section 160(2)
unauthorised payment	section 160(5)
unauthorised payments charge	section 208(1)
unauthorised payments surcharge	section 209(1)
uncrystallised funds lump sum death benefit	paragraph 15 of Schedule 29
unsecured pension fund lump sum death benefit	paragraph 17 of Schedule 29
valuation assumptions (in relation to a person)	section 277
winding-up lump sum	paragraph 10 of Schedule 29
winding-up lump sum death benefit	paragraph 21 of Schedule 29

#### Textual Amendments

- F40** Word in s. 280(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 652](#), [Sch. 3](#) (with [Sch. 2](#))
- F41** Words in s. 280(1) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 652](#) (with [Sch. 2](#))

#### *Other supplementary provisions*

VALID FROM 06/04/2006

#### **281 Minor and consequential amendments**

- (1) Schedule 35 contains minor and consequential amendments of enactments in consequence of, or otherwise in connection with, this Part.
- (2) The Treasury may by order make such other amendments (including repeals and revocations) as may appear appropriate in consequence of, or otherwise in connection with, this Part—
  - (a) in any enactment contained in an Act passed before 6th April 2006 or in the Session in which that date falls, and
  - (b) in any instrument made before that date or in the Session in which that date falls.

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- (3) An order under subsection (2) may include any transitional provisions or savings appearing to the Treasury to be appropriate.

## 282 Orders and regulations

- (1) Any power of the Treasury or the Board of Inland Revenue to make any order or regulations under this Part is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or the Board of Inland Revenue under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

## 283 Transitionals and savings

- (1) Schedule 36 contains miscellaneous transitional provisions and savings.
- (2) The Treasury may by order make any other transitional provision which may appear appropriate in consequence of, or otherwise in connection with, this Part or the repeals made by this Act in consequence of this Part.
- (3) An order under subsection (2) may, in particular, include savings from the effect of any amendment made by this Part or any repeal made by this Act in consequence of this Part.
- (4) Nothing in Schedule 36 limits the power conferred by subsection (2).
- (5) Nothing in that Schedule or in any provision made by virtue of subsection (2) prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (c. 30) (effect of repeals).

## 284 Commencement

- (1) Chapters 3 to 7 and section 281 (with Schedule 35) do not come into force until 6th April 2006.
- (2) But any power to make an order or regulations under any of those provisions may be exercised at any time after this Act is passed.

## PART 5

### OIL

## 285 Certain receipts not to be tariff receipts

- (1) The Oil Taxation Act 1983 (c. 56) is amended as follows.
- (2) In section 6(2) (meaning of tariff receipts) after “Subject to the provisions of this section” insert “ and section 6A below ”.
- (3) After section 6 insert—

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### “6A Tax-exempt tariffing receipts

- (1) An amount which is a tax-exempt tariffing receipt (see subsection (2) below) does not constitute a tariff receipt for the purposes of the Oil Taxation Acts.
- (2) An amount is a “tax-exempt tariffing receipt” for the purposes of the Oil Taxation Acts if—
  - (a) it would, apart from this section, be a tariff receipt of a participator in an oil field,
  - (b) it is received or receivable by the participator in a chargeable period ending on or after 30th June 2004 under a contract entered into on or after 9th April 2003, and
  - (c) it is in respect of tax-exempt business (see subsection (3) below).
- (3) For the purposes of this section an amount is in respect of tax-exempt business if it is an amount received or receivable by a participator in an oil field in respect of—
  - (a) the use of a qualifying asset, or
  - (b) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset,and that use of the qualifying asset falls within subsection (4) below.
- (4) Use of a qualifying asset falls within this subsection if it is—
  - (a) use in relation to a new field (see subsection (5) below) or oil won from such a field, or
  - (b) use in relation to a qualifying existing field (see subsection (5) below) or oil won from such a field.
- (5) In this section—

“existing field” means any oil field or foreign field which is not a new field;

“foreign field” means, subject to subsection (6) below (treatment of transmedian fields), any hydrocarbon accumulation which is not under the jurisdiction of the government of the United Kingdom;

“licensee”, in relation to a foreign field, means a person who has rights, interests or obligations in respect of the foreign field under a licence or other authority granted by the government of a country other than the United Kingdom;

“new field” means—

  - (a) an oil field for no part of which had—
    - (i) consent for development been granted to a licensee by the Secretary of State before 9th April 2003; or
    - (ii) a programme of development been served on a licensee or approved by the Secretary of State before that date; or
  - (b) a foreign field for no part of which had—
    - (i) any consent for development been granted to a licensee by the government of a country other than the United Kingdom before 9th April 2003; or

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(ii) a programme of development been served on a licensee or approved by such a government before that date;

and subsections (4) and (5) of section 36 of the Finance Act 1983 (which define “development” for the purposes of subsections (2) and (3) of that section) shall apply also for the purposes of this definition;

“the Oil Taxation Acts” means—

- (a) Parts 1 and 3 of the principal Act;
- (b) this Act; and
- (c) any other enactment relating to petroleum revenue tax;

“qualifying existing field” means an existing field as respects which the condition in section 6B(1) below is satisfied.

- (6) For the purposes of this section, in the case of an oil field which, by virtue of section 107 of the Finance Act 1980 (transmedian fields), is deemed to include the sector mentioned in subsection (1)(a)(ii) of that section—
  - (a) that sector shall be treated as a foreign field, and
  - (b) the remainder of that field shall be treated as a separate oil field.
- (7) In the application of provisions of the Oil Taxation Acts relating to tax-exempt tariffing receipts, references to oil, in relation to a foreign field, are references to any substance that would be oil within the meaning of the principal Act if the enactments mentioned in section 1(1) of that Act extended to the foreign field.
- (8) This section is subject to the transitional provisions in Part 2 of Schedule 37 to the Finance Act 2004 (expenditure incurred between 9th April and 31st December 2003: treatment of initial portion of tax-exempt tariffing receipts as tariff receipts).

### **6B The condition for being a qualifying existing field**

- (1) The condition for an existing field to be a qualifying existing field for the purposes of section 6A above is that at no time in the period of 6 years ending with 8th April 2003 (“the 6 year period”) was there—
  - (a) any use of a disqualifying asset (see subsection (2) below) in a UK area (see subsection (11) below) in relation to the field or oil won from it, or
  - (b) any provision of any services or other business facilities of whatever kind in connection with the use of a disqualifying asset in a UK area in relation to the field or oil won from it.
- (2) For the purposes of subsection (1) above “disqualifying asset”, in relation to an existing field and any time in the 6 year period, means an asset which at that time—
  - (a) was a qualifying asset in relation to a participator in an oil field; and
  - (b) was not an excepted asset (see subsection (3) below).
- (3) For the purposes of subsection (2) above “excepted asset”, in relation to an existing field and any time in the 6 year period, means any of the following—
  - (a) any asset (other than a tanker) which at that time was wholly situated in the existing field;

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- (b) any tanker which at that time was a non-dedicated tanker (see subsection (10) below) being used for transporting from the existing field oil which had been won from that field;
  - (c) any asset which at that time was being used in relation to oil which had been won from the existing field and transported from that field by a non-dedicated tanker;
  - (d) if the existing field is an oil field and is expected not to be a tanker loading field (see subsection (7) below)—
    - (i) any tanker which at that time was a dedicated tanker (see subsection (9) below) being used for transporting from the existing field oil which had been won from that field;
    - (ii) any asset which at that time was being used in relation to oil which had been won from the existing field and transported from that field by a dedicated tanker;
    - (iii) any asset which at that time was being used to transport from the existing field oil consisting of gas won from that field to another oil field for the purpose of enabling that oil to be used for assisting the extraction of oil from that other field;
  - (e) if at that time the existing field was not a taxable field, any asset by reference to which an election under section 231 of the Finance Act 1994 (election by reference to asset with excess capacity) was at that time in operation with respect to an oil field.
- (4) Where any use of an asset is, by virtue of subsection (3) above, use of an excepted asset, the provision of any services or other business facilities of whatever kind in connection with that use of that asset accordingly falls to be disregarded for the purposes of subsection (1)(b) above.
- (5) Where an asset in a UK area—
- (a) is a qualifying asset in relation to a participator in such an oil field as is mentioned in section 107 of the Finance Act 1980 (a “participator in the UK sector”), and
  - (b) is also, by virtue of paragraph 3 of Schedule 4 to this Act, a chargeable asset in relation to a participator in a foreign field (a “participator in the foreign sector”),
- subsection (6) below applies in relation to use of the asset in relation to the existing field or oil won from it.
- (6) Where this subsection applies, then, in determining for the purposes of subsection (1) above whether there has been any use of a disqualifying asset in relation to the existing field or oil won from it, any use of the asset in relation to that field or oil won from it shall be treated—
- (a) as use of a qualifying asset in relation to a participator in an oil field, if or to the extent that the use is attributable, on a just and reasonable basis, to a participator in the UK sector, or
  - (b) as use of an asset which was not a qualifying asset in relation to a participator in an oil field, if or to the extent that the use is attributable, on a just and reasonable basis, to a participator in the foreign sector.
- (7) For the purposes of subsection (3) above, the existing field is expected not to be a tanker loading field if, at the time when the relevant contract is entered into, it is expected that all (or virtually all) of the oil (other than oil consisting

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of gas) to be won from that field and transported from it after the beginning of the operational period will be so transported otherwise than by tanker.

- (8) For the purposes of subsection (7) above—
- (a) “the relevant contract” means the contract mentioned in section 6A(2) (b) above; and
  - (b) “the beginning of the operational period” means the time at which the qualifying asset to which that contract relates begins to be used under that contract in relation to the existing field or oil won from that field.
- (9) For the purposes of subsection (3) above a tanker is a dedicated tanker at any time if—
- (a) the existing field mentioned in that subsection is an oil field, and
  - (b) at that time the tanker is a mobile asset dedicated to that oil field (see section 2 above).
- (10) For the purposes of subsection (3) above a tanker is a non-dedicated tanker—
- (a) at any time, if the existing field mentioned in that subsection is not an oil field, or
  - (b) where that field is an oil field, at any time when the tanker is not a mobile asset dedicated to that oil field.
- (11) In this section “UK area” means each of the following—
- (a) the United Kingdom;
  - (b) the territorial sea of the United Kingdom;
  - (c) a designated area, to the extent that it does not fall to be treated by virtue of section 6A(6) above as a foreign field.
- (12) This section shall be construed as one with section 6A above.”.
- (4) In Schedule 2 (supplemental provisions in relation to receipts from qualifying assets) in paragraph 12 (purchase at place of extraction)—
- (a) in sub-paragraph (1), for “Subject to sub-paragraphs (4) and (5)” substitute “Subject to sub-paragraphs (4) to (6)”, and
  - (b) at the end of the paragraph add—
    - “(6) In any chargeable period ending on or after 30th June 2004, sub-paragraph (1) above does not apply to oil in a case where—
    - (a) had the operation or operations to which the oil was subjected as mentioned in paragraph (b) of that sub-paragraph been carried out under a contract entered into on or after 9th April 2003, and
    - (b) had an amount been received or receivable under the contract in that chargeable period by the participant,
 that amount would have been a tax-exempt tariffing receipt.”.
- (5) Schedule 37 to this Act has effect; and in that Schedule—
- Part 1 makes amendments to the Oil Taxation Act 1983 (c. 56) relating to allowable expenditure and disposal receipts;
  - Part 2 makes transitional provision;
  - Part 3 makes amendments to the Taxes Act 1988;
  - Part 4 makes amendments to other enactments.



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- (6) In Part 1 of Schedule 37 to this Act—
  - (a) the amendments made by paragraph 5 (which relate to disposal receipts) have effect in relation to disposals in chargeable periods ending on or after 30th June 2004, and
  - (b) the other amendments made by that Part have effect in relation to expenditure incurred on or after 1st January 2004.
- (7) The amendments made by Part 3 of that Schedule have effect in relation to chargeable periods, within the meaning of the Taxes Act 1988, ending on or after 1st January 2004.
- (8) The amendments made by Part 4 of that Schedule have effect in relation to chargeable periods (within the meaning of section 98 of the Finance Act 1999 (c. 16)) ending on or after 30th June 2004.

## **286 Petroleum extraction activities: exploration expenditure supplement**

- (1) Chapter 5 of Part 12 of the Taxes Act 1988 (petroleum extraction activities) is amended as follows.
- (2) After section 496 (tariff receipts) insert—

### **“496A Exploration expenditure supplement**

Schedule 19B to this Act (exploration expenditure supplement) shall have effect.”.

- (3) Before Schedule 20 insert the Schedule 19B set out in Schedule 38 to this Act.

## **287 Restrictions on expenditure allowable**

- (1) In Schedule 4 to the Oil Taxation Act 1975 (c. 22), paragraph 2 (restrictions on expenditure allowable where acquisition etc from connected person or otherwise not at arm’s length) is amended as follows.
- (2) In sub-paragraph (1), for the words following paragraph (b) (which limit the expenditure allowable to the cost in a transaction to which paragraph 2 does not apply) substitute— “ as having incurred that expenditure only to the extent that it does not exceed the lowest of the amounts described in sub-paragraph (1ZA) below which is applicable in the particular case. ”.
- (3) After sub-paragraph (1) insert—
  - “(1ZA) Those amounts are—
    - (a) the amount of expenditure (other than loan expenditure) incurred up to the time mentioned in sub-paragraph (1) above in a transaction to which this paragraph does not apply (or, if there has been more than one such transaction, the later or latest of them) in acquiring, bringing into existence, or enhancing the value of, the asset;
    - (b) the amount of the open market consideration for the acquisition, bringing into existence, or enhancement of the value, of the asset;
    - (c) in a case where the other party to the transaction is a participator in a taxable field and in the case of that participator either—

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- (i) an amount is brought into account under section 2 of this Act in accordance with section 7(1) of the Oil Taxation Act 1983 as disposal receipts in respect of the transaction, or
  - (ii) no amount is so brought into account by reason of reductions falling to be made in the amount that would have been so brought into account apart from those reductions,
- the amount so brought into account or, as the case may be, nil;
- (d) in a case where the other party to the transaction is not a participator in a taxable field but—
    - (i) the transaction is the latest in a series of transactions in respect of the asset (or in respect of an asset or assets in which the asset was comprised),
    - (ii) those transactions are transactions to which this paragraph applies,
    - (iii) in the case of at least one of those transactions, there is a party who is a participator in an oil field, and
    - (iv) in the case of any such party, an amount either is brought into account as mentioned in paragraph (c)(i) above in respect of the transaction or would have been so brought into account but for such reductions as are mentioned in paragraph (c)(ii) above,
 so much of the amount so brought into account in respect of that transaction (or, where there are two or more such transactions, the later or latest of them) as is justly and reasonably referable to the asset mentioned in sub-paragraph (1) above (taking that amount as being nil in the case of any transaction where no amount is so brought into account by reason of any such reductions).”
  - (4) In sub-paragraph (1B) (meaning of “loan expenditure” in sub-paragraph (1)) for “(1)” substitute “(1ZA)(a) ”.
  - (5) After sub-paragraph (1B) insert—
 

“(1C) The reference in sub-paragraph (1ZA)(b) above to the open market consideration for the acquisition, bringing into existence, or enhancement of the value, of an asset is a reference to the consideration which might reasonably have been given for the acquisition, bringing into existence, or enhancement of the value, of the asset (whatever the nature of the acquisition, bringing into existence or enhancement of the value) had it been made in a transaction to which this paragraph does not apply.”.
  - (6) The amendments made by this section have effect in relation to expenditure incurred on or after 17th March 2004.

## 288 Terminal losses

- (1) Schedule 17 to the Finance Act 1980 (c. 48) (transfers of interests in oil fields) is amended as follows.
- (2) For paragraph 15 (terminal losses) substitute—

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## 15 “Terminal losses

- (1) This paragraph applies in any case where—
  - (a) such an allowable loss as falls to be relieved under section 7(3) accrues to the new participator from the field in a chargeable period ending after 17th March 2004, but
  - (b) some or all of the loss cannot be relieved under section 7(3) against assessable profits accruing to him from the field.
- (2) So much of the loss as cannot be so relieved (“the remaining loss”) shall be regarded as an allowable unrelievable field loss in relation to the new participator (“the loss-maker”) only to the extent that—
  - (a) so much of it as cannot be relieved in accordance with sub-paragraphs (3) to (6) below,  
exceeds
  - (b) the aggregate of any relevant previous participators' expenditure unrelated to the field (see sub-paragraphs (10) and (11) below).
- (3) The remaining loss shall be treated as an allowable loss which falls to be relieved under section 7(3) against so much of any assessable profits accruing to the old participator from the field as is attributable to his represented interest (see sub-paragraphs (9) and (12) below).
- (4) Where a person is the new participator in relation to two or more old participators—
  - (a) the remaining loss shall be apportioned between those old participators in such manner as is just and reasonable having regard to the interests respectively transferred by them to the new participator,
  - (b) sub-paragraph (3) above shall have effect separately in relation to each of them (and the part of the remaining loss apportioned to him).
- (5) Any relief by virtue of sub-paragraph (3) above shall be given against the assessable profits accruing to the old participator in an earlier chargeable period only to the extent to which it cannot be given against the assessable profits accruing to him in a later chargeable period.
- (6) If—
  - (a) the old participator acquired some or all of his interest in the field by a previous transfer in relation to which he was the new participator,
  - (b) Parts 2 and 3 of this Schedule applied in relation to that previous transfer, and
  - (c) some or all of the part of the remaining loss treated as an allowable loss of his cannot be relieved in accordance with sub-paragraph (3) above,sub-paragraphs (3) to (5) above shall apply in relation to so much of that part of the remaining loss as cannot be so relieved as they apply in relation to the remaining loss, but construing the references in those sub-paragraphs to the new participator and the old participator by reference to that previous transfer and the parties to it, and then applying this sub-paragraph accordingly (and so on).

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(7) But where—

- (a) the person who is the old participator in relation to a transfer made before 17th March 2004 (“the later transfer”) is also the new participator in relation to a previous transfer, and
- (b) Parts 2 and 3 of this Schedule applied in relation to both of those transfers,

sub-paragraph (3) above shall not apply by virtue of sub-paragraph (6) above in relation to so much of the assessable profits of the person who is the old participator in relation to that previous transfer as is attributable to so much of his interest as constitutes the whole or part of his represented interest by virtue of the later transfer.

(8) Where losses accruing to each of two or more participators fall to be relieved by virtue of sub-paragraph (3) above against the same assessable profits, a loss accruing to the person who last had an interest representing the whole or part of the transferred interest at an earlier time shall be so relieved before one accruing to a person who last had such an interest at a later time.

In this sub-paragraph “the transferred interest” means the interest transferred by the person against whose assessable profits the losses fall to be relieved.

(9) In determining for the purposes of this paragraph the assessable profits of a participator that are attributable to his represented interest, the assessable profits shall be apportioned between—

- (a) the represented interest, and
- (b) the remainder of the participator’s interest,

using such method as is just and reasonable, having regard to the respective sizes of those interests.

(10) For the purposes of this paragraph “relevant previous participators’ expenditure unrelated to the field” means so much of each relevant previous participator’s allowed expenditure unrelated to the field as is referable to his represented interest, other than excepted old expenditure.

(11) For the purposes of sub-paragraph (10) above—

“allowed expenditure unrelated to the field”, in relation to a participator, is expenditure unrelated to the field which is allowed on a claim or election made by the participator;

“excepted old expenditure” is expenditure which has been allowed in pursuance of a claim or election for its allowance received by the Board before 17th March 2004;

“relevant previous participator” means a participator against any of whose assessable profits relief is given in accordance with sub-paragraphs (3) to (6) above;

and sub-paragraph (9) above shall apply in relation to allowed expenditure unrelated to the field as it applies in relation to assessable profits.

(12) In this paragraph—

“expenditure unrelated to the field” has the meaning given by section 6(9);

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“the loss-maker” shall be construed in accordance with sub-paragraph (2) above;

“previous owner” means a person from whom the loss-maker directly or indirectly derives his title to the whole or any part of his interest;

“represented interest”, in the case of a previous owner, means so much of the interest which that previous owner transferred, by a transfer to which Parts 2 and 3 of this Schedule apply, as is represented in the loss-maker’s interest by virtue only of—

- (a) that transfer, or
- (b) that transfer and one or more subsequent transfers to which those Parts apply,

making, for the purposes of paragraph (b) above, such apportionments as are just and reasonable, having regard to the interests transferred by each of the transferors.”.

- (3) The amendment made by this section has effect in relation to losses accruing in chargeable periods ending after 17th March 2004.

## PART 6

### OTHER TAXES

#### *Climate change levy*

#### **289 Supplies to producers of commodities**

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as set out in subsections (2) to (5).
- (2) In paragraph 13 (exemption for supplies to producers of commodities), in paragraph (b), after sub-paragraph (ii) insert—
  - “(iia) in producing biodiesel for chargeable use within the meaning of section 6AA of the Hydrocarbon Oil Duties Act 1979 (excise duty on biodiesel),
  - (iib) in producing bioblend for delivery for home use from any place mentioned in section 6AB(1)(b) of that Act (excise duty on bioblend),
  - (iic) in producing bioethanol for chargeable use within the meaning of section 6AD of that Act (excise duty on bioethanol),
  - (iid) in producing bioethanol blend for delivery for home use from any place mentioned in section 6AE(1)(b) of that Act (excise duty on bioethanol blend)”.
- (3) In paragraph 13(b)(iii), for “liquids that are not hydrocarbon oil” substitute “liquids (within the meaning of that section) in respect of which a charge is capable of arising under that section”.

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(4) In paragraph 13, for the words from “For this purpose” to the end substitute— “Expressions which are used in this paragraph and the Hydrocarbon Oil Duties Act 1979 have the same meaning in this paragraph as they have in that Act.”

(5) After paragraph 13 insert—

“13A

(1) The Commissioners may by regulations make provision amending paragraph 13 for the purpose of—

- (a) extending the circumstances in which a supply of a taxable commodity is exempt from the levy, or
- (b) restricting the circumstances in which a supply of a taxable commodity is exempt from the levy.

(2) Regulations under this paragraph that include provision made for the purpose mentioned in sub-paragraph (1)(a) may provide for the provision to have retrospective effect.

(3) A statutory instrument that contains (whether alone or with other provisions) regulations under this paragraph made for the purpose mentioned in sub-paragraph (1)(b) shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of the House of Commons.”

(6) The amendments made by subsections (2) to (4) have effect—

- (a) as regards biodiesel and bioblend, in relation to supplies made on or after the day on which this Act is passed;
- (b) as regards bioethanol and bioethanol blend, in relation to supplies made on or after 1st January 2005.

#### *Aggregates levy*

### **290 Transitional tax credit in Northern Ireland: changes to existing scheme**

(1) In section 30A of the Finance Act 2001 (c. 9) (aggregates levy: transitional tax credit in Northern Ireland) after subsection (3) insert—

“(4) The Treasury may by order made by statutory instrument amend subsection (2) above so as to—

- (a) change the period in relation to which the amount of a tax credit is to be reduced;
- (b) change the amount by which a tax credit is to be reduced.

(5) An order under subsection (4) above shall not be made unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons.”

(2) This section shall be deemed to have come into force on 1st April 2004.

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## 291 Transitional tax credit in Northern Ireland: new scheme

- (1) Part 2 of the Finance Act 2001 (aggregates levy) is amended as set out in subsections (2) and (3).
- (2) For section 30A substitute—

### “30A Transitional tax credit in Northern Ireland

- (1) The Commissioners may by regulations make provision of the kind described in section 30(2) above (entitlement to tax credit) in relation to cases within subsection (2) below.
- (2) The cases are those where a charge to aggregates levy has arisen on a quantity of aggregate which has been subjected to commercial exploitation in Northern Ireland during a period—
  - (a) starting on the prescribed date, and
  - (b) ending on 31st March 2011.
- (3) The date prescribed for the purposes of subsection (2)(a) above may be earlier than the date on which this section comes into force.
- (4) The amount of a tax credit to which a person is entitled under the regulations must not be more than 80% of any aggregates levy charged on the aggregate in question.
- (5) Regulations under this section may in particular make provision—
  - (a) for a person operating a site to be entitled to a tax credit under the regulations in respect of a period for which he holds an aggregates levy credit certificate which has been issued in respect of the site and which has not been withdrawn;
  - (b) for an aggregates levy credit certificate to be issued to a person in respect of a site only if an aggregates levy credit agreement is in force in respect of the site;
  - (c) for the withdrawal of an aggregates levy credit certificate where the aggregates levy credit agreement in respect of which it was issued is no longer in force;
  - (d) for the form and content of aggregates levy credit certificates and aggregates levy credit agreements.
- (6) Regulations under this section which make provision such as is mentioned in subsection (5)(d) above may be framed by reference to any provisions of a notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (7) If regulations under this section make provision such as is mentioned in subsection (5) above, the Commissioners or the Northern Ireland Department may—
  - (a) enter into aggregates levy credit agreements;
  - (b) issue and withdraw aggregates levy credit certificates;
  - (c) take such other steps as the Commissioners or the Northern Ireland Department consider appropriate in relation to aggregates levy credit agreements and aggregates levy credit certificates.

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- (8) Regulations under this section which make provision such as is mentioned in subsection (5) above must include provision requiring the Northern Ireland Department to inform the Commissioners if the Northern Ireland Department issues or withdraws an aggregates levy credit certificate.
- (9) Subsections (3) to (5) of section 30 above apply to regulations under this section as they apply to regulations under that section.
- (10) The Treasury may by order made by statutory instrument amend subsection (4) above by substituting for the percentage for the time being specified in that subsection a percentage lower than 80%.
- (11) An order under subsection (10) above shall not be made unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons.
- (12) Any expenses of the Northern Ireland Department under this section shall be charged on the Consolidated Fund of Northern Ireland.
- (13) In this section—
  - “aggregates levy credit agreement” means an agreement entered into in respect of a site by the person operating the site and the Commissioners or the Northern Ireland Department;
  - “aggregates levy credit certificate” means a certificate issued to the person operating a site by the Commissioners or the Northern Ireland Department as evidence of the fact that an aggregates levy credit agreement has been entered into in respect of the site;
  - “the Northern Ireland Department” means the Department of the Environment in Northern Ireland.”
- (3) In section 48(1) (interpretation), in the definition of “tax credit regulations” after “section 30” insert “ or 30A ”.
- (4) The preceding provisions of this section come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (5) An order under subsection (4) may—
  - (a) make different provision for different purposes;
  - (b) make incidental, consequential, supplemental or transitional provision and savings.

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**Commencement Information**

**I12** S. 291 wholly in force at 23.7.2004; s. 291(4)(5) in force at Royal Assent, see s. 291(4); s. 291(1)-(3) in force at 23.7.2004 by S.I. 2004/1942, art. 2

*Lorry road-user charge*

**292 Lorry road-user charge**

- (1) Section 137 of the Finance Act 2002 (c. 23) (lorry road-user charge) is amended as follows.



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(2) For subsection (4) substitute—

“(4) Lorry road-user charge—

- (a) shall be under the care and management of the Commissioners of Customs and Excise, and
- (b) shall be administered and enforced in accordance with such provisions as Parliament may determine.”.

(3) For subsections (5) and (6) substitute—

“(5) All money and securities for money collected or received for or on account of lorry road-user charge shall—

- (a) if collected or received in Great Britain, be placed to the general account of the Commissioners of Customs and Excise kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979;
- (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.”.

#### *Inheritance tax*

### **293 Delivery of accounts etc**

(1) Section 256 of the Inheritance Tax Act 1984 (c. 51) (regulations about information to be furnished to the Board) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “specified in” insert “ or determined under ”;
- (b) after paragraph (a) insert—
  - “(aa) requiring persons who by virtue of regulations under paragraph (a) above are not required to deliver accounts under section 216 above to produce to the Board, in such manner as may be specified in or determined under the regulations, such information or documents as may be so specified or determined”;
- (c) in paragraph (b), after “so specified” insert “ or determined ”;
- (d) paragraph (c) shall cease to have effect.

(3) After subsection (1) insert—

“(1A) Regulations under subsection (1)(aa) may in particular—

- (a) provide that information or documents must be produced to the Board by producing it or them to—
  - (i) a probate registry in England and Wales;
  - (ii) the sheriff in Scotland;
  - (iii) the Probate and Matrimonial Office in Northern Ireland;
- (b) provide that information or documents produced as specified in paragraph (a) is or are to be treated for any or all purposes of this Act as produced to the Board;

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- (c) provide for the further transmission to the Board of information or documents produced as specified in paragraph (a).”
- (4) Subsection (2) shall cease to have effect.
- (5) In subsection (3), at the end insert “ and may make different provision for different cases ”.
- (6) After subsection (3) insert—
  - “(3A) Regulations under this section may only be made—
    - (a) in relation to England and Wales or Northern Ireland, after consulting the Lord Chancellor;
    - (b) in relation to Scotland, after consulting the Scottish Ministers.”

## 294 Grant of probate

- (1) In section 109 of the Supreme Court Act 1981 (c. 54) (refusal of grant of probate where inheritance tax unpaid)—
  - (a) for subsection (1) substitute—
    - “(1) No grant shall be made, and no grant made outside the United Kingdom shall be resealed, except—
      - (a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or
      - (b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners either—
        - (i) that the inheritance tax payable on the delivery of the account has been paid; or
        - (ii) that no such tax is so payable.”;
    - (b) in subsection (2), for “this section” substitute “ subsection (1)(b) ”;
    - (c) after subsection (2) insert—
      - “(2A) In this section and the following section, “the Commissioners” means the Commissioners of Inland Revenue”;
    - (d) subsection (3) shall cease to have effect.
- (2) In section 42 of the Probate and Legacy Duties Act 1808 (c. 149) (grant of confirmation)—
  - (a) the existing text shall become subsection (1) of that section;
  - (b) at the beginning of that subsection, for “And” substitute “ Subject to subsection (2) below, ”; and
  - (c) after that subsection insert—
    - “(2) In a case to which regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (c. 51) apply (excepted estates), it shall not be lawful to grant confirmation such as is mentioned in subsection (1) above except on the production of information or documents in accordance with those regulations.”

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- (3) In Article 20 of the Administration of Estates (Northern Ireland) Order 1979 (S.I.1979/1575 (N.I.14)) (inheritance tax accounts)—
- (a) for paragraph (1) substitute—
- “(1) The High Court shall not make any grant, or reseal any grant made outside the United Kingdom, except—
- (a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or
- (b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners of Inland Revenue either—
- (i) that the inheritance tax payable on the delivery of the account has been paid; or
- (ii) that no such tax is so payable.”;
- (b) in paragraph (2) of that Article, for “this Article” substitute “ paragraph (1) (b) ”.
- (4) Subsection (1) shall come into force on such day as the Treasury may after consulting the Lord Chancellor by order made by statutory instrument appoint.
- (5) Subsection (2) shall come into force on such day as the Treasury may after consulting the Scottish Ministers by order made by statutory instrument appoint.
- (6) Subsection (3) shall come into force on such day as the Treasury may after consulting the Lord Chancellor by order made by statutory instrument appoint.

#### Commencement Information

**I13** S. 294(1)-(3) in force at 1.11.2004 by [S.I. 2004/2571](#), [art. 2](#)

**I14** S. 294(4)-(6) in force at Royal Assent, see s. 294(4)-(6)

## 295 Amendments to penalty regime

- (1) The Inheritance Tax Act 1984 (c. 51) is amended as specified in subsections (2) to (4).
- (2) In section 245 (failure to deliver accounts)—
- (a) in subsections (2)(a) and (3), for “not exceeding” substitute “ of ”;
- (b) after subsection (4) insert—
- “(4A) Without prejudice to any penalties under subsections (2) and (3) above, if—
- (a) the failure by the taxpayer to deliver the account continues after the anniversary of the end of the period given by section 216(6) or (7) (whichever is applicable), and
- (b) there would have been a liability to tax shown in the account, the taxpayer shall be liable to a penalty of an amount not exceeding £3,000.”
- (3) In section 245A (failure to provide information etc)—

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- (a) after subsection (1A) insert—
    - “(1B) Without prejudice to any penalties under subsection (1A) above, if a person continues to fail to comply with the requirements of section 218A after the anniversary of the end of the period of six months referred to in section 218A(1), he shall be liable to a penalty of an amount not exceeding £3,000.”;
  - (b) in subsection (5)—
    - (i) after “failing to make a return” insert “, to comply with the requirements of section 218A ”;
    - (ii) after “fails to make the return” insert “, to comply with the requirements of section 218A ”.
- (4) In section 247 (provision of incorrect information)—
- (a) in subsection (1), for the words from “, in the case of fraud” to the end substitute “ to a penalty not exceeding the difference mentioned in subsection (2) below ”;
  - (b) in subsection (3), for the words from “, in the case of fraud” to the end substitute “ to a penalty not exceeding £3,000 ”.
- (5) Subsection (2)(a) above has effect in relation to a failure by any person to deliver an account under section 216 or 217 of the Inheritance Tax Act 1984 (c. 51) where the period under section 216(6) or (7) or 217 of that Act (whichever is applicable) within which the person is required to deliver the account expires after six months from the day on which this Act is passed.
- (6) Subsection (2)(b) above has effect—
- (a) in relation to a failure by any person to deliver an account under section 216 of the Inheritance Tax Act 1984 where the period under section 216(6) or (7) of that Act (whichever is applicable) within which the person is required to deliver the account expires after the day on which this Act is passed; and
  - (b) in relation to such a failure to deliver such an account where that period expires on or before the day on which this Act is passed, as if, in the subsection (4A) inserted in section 245 of that Act by subsection (2)(b) above, for the words “anniversary of the end of the period given by section 216(6) or (7) (whichever is applicable)” there were substituted “ end of the period of twelve months beginning with the day on which the Finance Act 2004 is passed ”.
- (7) Subsection (3)(a) above has effect—
- (a) in relation to a failure to comply with the requirements of section 218A of the Inheritance Tax Act 1984 where the period of six months referred to in subsection (1) of that section expires after the day on which this Act is passed; and
  - (b) in relation to such a failure to comply with those requirements where that period expires on or before the day on which this Act is passed, as if, in the subsection (1B) inserted in section 245A of that Act by subsection (3) (a) above, for the words “anniversary of the end of the period of six months referred to in section 218A(1)” there were substituted “ end of the period of twelve months beginning with the day on which the Finance Act 2004 is passed ”.
- (8) Subsection (3)(b) above has effect in relation to a failure to comply with the requirements of section 218A of the Inheritance Tax Act 1984 where the period of

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six months referred to in subsection (1) of that section expires after the day on which this Act is passed.

- (9) Subsection (4) above has effect in relation to incorrect accounts, information or documents delivered, furnished or produced after the day on which this Act is passed.

### *Stamp duty land tax and stamp duty*

## **296 Miscellaneous amendments**

Schedule 39 to this Act, which makes amendments to Part 4 (stamp duty land tax) and Part 5 (stamp duty) of the Finance Act 2003 (c. 14), has effect.

### *Stamp duty land tax*

## **297 Leases**

- (1) Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended as follows.
- (2) In subsection (3) of section 43 (land transactions), in paragraph (d) (inserted by paragraph 2(b) of Schedule 39 to this Act), after “where” insert “ (i) ” and at the end insert “, or
- (ii) paragraph 15A of Schedule 17A (reduction of rent or term) applies.”.
- (3) In section 48 (chargeable interests), at the end of subsection (7) (inserted by paragraph 4(2) of that Schedule) insert “ and to paragraph 15A of Schedule 17A (reduction of rent or term of lease) ”.
- (4) In section 53 (deemed market value where transaction involves connected company), for subsection (1) substitute—
- “(1) This section applies where the purchaser is a company and—
- (a) the vendor is connected with the purchaser, or
- (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected.
- (1A) The chargeable consideration for the transaction shall be taken to be not less than—
- (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
- (b) if the acquisition is the grant of a lease at a rent, that rent.”.
- (5) In section 79 (registration of land transactions etc), in subsection (2) (transactions to which section does not apply) (as amended by paragraph 7 of Schedule 39 to this Act)
- 
- (a) in paragraph (a) for the words from “by virtue of” to the end substitute “by virtue of—
- (i) section 45 (contract and conveyance: effect of transfer of rights), or
- (ii) paragraph 12B of Schedule 17A (assignment of agreement for lease),”;

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(b) at the end insert—

- “(c) under paragraph 12A(2) or 19(3) of Schedule 17A (agreement for lease), or
- (d) under paragraph 13 (increase of rent) or 15A (reduction of rent or term) of that Schedule.”.

(6) After that subsection insert—

“(2A) Subsection (1), so far as relating to the entry of a notice under section 34 of the Land Registration Act 2002 or section 38 of the Land Registration Act (Northern Ireland) 1970 (notice in respect of interest affecting registered land), does not apply where the land transaction in question is the variation of a lease.”.

(7) In subsection (3) of that section, after “The certificate” insert “ referred to in subsection (1) ”.

(8) In Schedule 4 (chargeable consideration), in paragraph 10 (carrying out of works), in sub-paragraph (2A) (inserted by paragraph 9(2) of Schedule 39 to this Act), for the words from the beginning to “completion,” substitute—

“Where by virtue of—

- (a) subsection (8) of section 44 (contract and conveyance),
- (b) paragraph 12A of Schedule 17A (agreement for lease), or
- (c) paragraph 19(3) to (6) of Schedule 17A (missives of let etc in Scotland),

there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease), ”.

(9) Subsections (2) to (4) and (8) apply in relation to any transaction of which the effective date is on or after the day on which this Act is passed.

(10) Subsections (5) to (7) apply in relation to any transaction or deemed transaction of which the effective date is on or after 17th March 2004.

(11) In this section “effective date” has the same meaning as in Part 4 of the Finance Act 2003 (c. 14).

## **298 Notification, registration and penalties**

(1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.

(2) In section 77 (notifiable transactions)—

(a) after subsection (2) insert—

“(2A) The assignment of a lease is notifiable if—

- (a) the grant of the lease, if occurring at the time of the assignment, would be notifiable, or
- (b) there is consideration for the assignment that is chargeable at a rate of 1% or higher, or would be so chargeable but for a relief.”;

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- (b) in subsection (3), for “unless it is exempt from charge under Schedule 3” substitute “unless—
    - (a) the acquisition is exempt from charge under Schedule 3, or
    - (b) the land consists entirely of residential property and the chargeable consideration for the acquisition, together with that of any linked transactions, is less than £1,000”;
  - (c) after subsection (5) (inserted by paragraph 4(3) of Schedule 39 to this Act) insert—
    - “(6) In this section “relief” does not include any exemption from charge under Schedule 3.”.
- (3) In section 79 (registration of land transactions etc), in subsection (1)(b), after “any register maintained by the Keeper of the Registers of Scotland” insert “ (other than the Register of Community Interests in Land) ”.
- (4) In section 99 (general provisions about penalties), after subsection (2) insert—
  - “(2A) Where a person is liable to more than one tax-related penalty in respect of the same land transaction, each penalty after the first shall be reduced so that his liability to such penalties, in total, does not exceed the amount of whichever is (or, but for this subsection, would be) the greatest one.”.
- (5) In Schedule 6 (disadvantaged areas relief)—
  - (a) for the heading of Part 4 substitute “ SUPPLEMENTARY ”;
  - (b) after paragraph 12 insert—

### 13 “Notification of transactions

For the purposes of section 77 (which specifies what land transactions are notifiable) no account shall be taken of any provision of this Schedule to the effect that consideration does not count as chargeable consideration.”.

## 299 Claims not included in returns

- (1) Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended as follows.
- (2) After section 82 insert—

### “82A Claims not included in returns

Schedule 11A has effect with respect to claims not included in returns.”.

- (3) After Schedule 11 insert the Schedule set out in Schedule 40 to this Act.
- (4) In section 80 (adjustment where contingency ceases or consideration is ascertained), in subsection (4) (claim for repayment), for the words from “the amount” to the end substitute—
  - “(a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
  - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid”.

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- (5) In section 111 (claim for repayment if regulations under general power not approved) in subsection (1), for the words from “any amount” to the end substitute “ a claim may be made to the Inland Revenue for repayment of any tax, interest or penalty that would not have been payable but for the regulations ”.
- (6) In section 113 (functions conferred on “the Inland Revenue”), after subsection (3) insert—
- “(3A) The following functions of the Inland Revenue under Schedule 11A (claims not included in returns) are functions of the Board—
- (a) functions under paragraph 2(1) (form of claims),
- (b) functions relating to a claim made to the Board.”.
- (7) In Schedule 10 (returns, enquiries, assessments and appeals), in paragraph 33 (relief in case of double assessment)—
- (a) in sub-paragraph (1), for “for relief under this paragraph” substitute “ to the Inland Revenue for relief against any double charge ”;
- (b) omit sub-paragraphs (2) and (3).
- (8) In paragraph 34 of that Schedule (relief in case of mistake in return)—
- (a) in sub-paragraph (1), for “for relief under this paragraph” substitute “ to the Inland Revenue for relief against any excessive charge ”;
- (b) in sub-paragraph (2), omit “by notice in writing given to the Inland Revenue”;
- (c) omit sub-paragraph (3).

### **300 Assents and appropriations by personal representatives**

- (1) In Schedule 3 to the Finance Act 2003 (c. 14) (stamp duty land tax: transactions exempt from charge), after paragraph 3 insert—

#### **“Assents and appropriations by personal representatives**

- 3A (1) The acquisition of property by a person in or towards satisfaction of his entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is exempt from charge.
- (2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.
- (3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 8A(1) of Schedule 4.
- (4) In this paragraph—
- “debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and
- “secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.”.

- (2) The amendment made by this section is deemed always to have had effect.



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### 301 Chargeable consideration

- (1) In Schedule 3 to the Finance Act 2003 (transactions exempt from charge), in paragraph 4 (variation of testamentary dispositions etc) after sub-paragraph (2) insert—

“(2A) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 8A(2) of Schedule 4.”.

- (2) Schedule 4 to that Act (stamp duty land tax: chargeable consideration) is amended as follows.

- (3) In paragraph 8 (debt as consideration), after sub-paragraph (1) insert—

“(1A) Where—

- (a) debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and
- (b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the purchaser, and that assumption of debt constitutes chargeable consideration for the transaction.

(1B) Where in a case in which sub-paragraph (1)(b) applies—

- (a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and
- (b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there are two or more such persons immediately afterwards,

the amount of secured debt assumed shall be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to his undivided share of the property at that time.

(1C) For the purposes of sub-paragraph (1B), in England and Wales and Northern Ireland each joint tenant of property is treated as holding an equal undivided share of it.”.

- (4) In sub-paragraph (2) of that paragraph, for “sub-paragraph (1)” substitute “ this paragraph ”.

- (5) After paragraph 8 insert—

#### 8A “Cases where conditions for exemption not fully met

- (1) Where a land transaction would be exempt from charge under paragraph 3A of Schedule 3 (assents and appropriations by personal representatives) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

“Secured debt” has the same meaning as in that paragraph.

- (2) Where a land transaction would be exempt from charge under paragraph 4 of Schedule 3 (variation of testamentary dispositions etc) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other

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than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.”.

- (6) The amendments made by subsections (3) and (4) apply in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this act is passed.
- (7) The other amendments made by this section are deemed always to have had effect.

### 302 Charities relief

- (1) In Schedule 8 to the Finance Act 2003 (stamp duty land tax: charities relief), after paragraph 2 insert—

**“Cases where first condition not fully met**

- 3 (1) This paragraph applies where—
- (a) a land transaction is not exempt from charge under paragraph 1 because the first condition in that paragraph is not met, but
  - (b) the purchaser (“C”) intends to hold the greater part of the subject-matter of the transaction for qualifying charitable purposes.
- (2) In such a case—
- (a) the transaction is exempt from charge, but
  - (b) for the purposes of paragraph 2 (withdrawal of charities relief) “disqualifying event” includes—
    - (i) any transfer by C of a major interest in the whole or any part of the subject-matter of the transaction, or
    - (ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter,
 that is not made in furtherance of the charitable purposes of C.
- (3) For the purposes of sub-paragraph (2)(b)(ii)—
- (a) a lease is granted “at a premium” if there is consideration other than rent, and
  - (b) a lease is a “low-rental” lease if the annual rent (if any) does not exceed £600 a year.
- (4) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 2—
- (a) the date of the event for those purposes is the effective date of the transaction;
  - (b) paragraph 2 has effect as if—
    - (i) in sub-paragraph (1)(b), for “at the time of” there were substituted “immediately before”,
    - (ii) in sub-paragraph (4)(a), for “at the time of” there were substituted “immediately before and immediately after”, and
    - (iii) sub-paragraph (4)(b) were omitted.
- (5) In this paragraph—

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“qualifying charitable purposes” has the same meaning as in paragraph 1;

“rent” has the same meaning as in Schedule 5 (amount of tax chargeable: rent) and “annual rent” has the same meaning as in paragraph 9(2) of that Schedule.”.

(2) After paragraph 3 of that Schedule (inserted by subsection (1) above) insert—

**“Charitable trusts**

4 (1) This Schedule applies in relation to a charitable trust as it applies in relation to a charity.

(2) In this paragraph “charitable trust” means—

- (a) a trust of which all the beneficiaries are charities, or
  - (b) a unit trust scheme in which all the unit holders are charities,
- and “charity” has the same meaning as in paragraph 1.

(3) In this Schedule as it applies by virtue of this paragraph—

- (a) references to the purchaser in paragraphs (a) and (b) of paragraph 1(2) are to the beneficiaries or unit holders, or any of them;
- (b) the reference to the purchaser in paragraph 2(3)(a) is to any of the beneficiaries or unit holders;
- (c) the reference in paragraph 3(2)(b) to the charitable purposes of C is to those of the beneficiaries or unit holders, or any of them.”

(3) In paragraph 1(1) of that Schedule, for “this paragraph” substitute “ this Schedule ”.

(4) In paragraph 2(1) of that Schedule, for “paragraph 1 (charities relief)” substitute “ this Schedule ”.

(5) In section 81 (further return where relief withdrawn), in paragraph (c) of subsection (4) (meaning of “the disqualifying event”), after “paragraph 2(3)” insert “ or 3(2) ”.

(6) In section 87 (interest on unpaid tax), in paragraph (c) of subsection (4) (meaning of “the disqualifying event”), after “paragraph 2(3)” insert “ or 3(2) ”.

(7) This section applies in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this Act is passed.

**303 Shared ownership leases**

(1) In Schedule 9 to the Finance Act 2003 (stamp duty land tax: right to buy, shared ownership leases etc), after paragraph 4 insert—

**“Shared ownership lease: treatment of staircasing transaction**

4A (1) This paragraph applies where under a shared ownership lease—

- (a) the lessee or lessees have the right, on the payment of a sum, to require the terms of the lease to be altered so that the rent payable under it is reduced, and
- (b) by exercising that right the lessee or lessees acquire an interest, additional to one already held, calculated by reference to the

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market value of the dwelling and expressed as a percentage of the dwelling or its value (a “share of the dwelling”).

- (2) Such an acquisition is exempt from charge if—
  - (a) an election was made for tax to be charged in accordance with paragraph 2 or, as the case may be, paragraph 4 and any tax chargeable in respect of the grant of the lease has been paid, or
  - (b) immediately after the acquisition the total share of the dwelling held by the lessee or lessees does not exceed 80%.
- (3) In this paragraph “shared ownership lease” means a lease granted—
  - (a) by a qualifying body, or
  - (b) in pursuance of the preserved right to buy,
 in relation to which the conditions in paragraph 2(2) or 4(2) are met.
- (4) Section 118 (meaning of “market value”) does not apply in relation to the references in this paragraph to the market value of the dwelling.”
- (2) In sub-paragraph (1) of paragraph 5 of that Schedule (meaning of “qualifying body” and “preserved right to buy”) for “2 and 4” substitute “ 2, 4 and 4A ”.
- (3) In Schedule 19 to that Act (stamp duty land tax: commencement and transitional provisions), in paragraph 7 (earlier related transactions under stamp duty), for sub-paragraph (2) substitute—
  - “(2) In paragraph 3 of Schedule 9 (relief for transfer of reversion under shared ownership lease where election made for market value treatment) and paragraph 4A of that Schedule (shared ownership lease: treatment of staircasing transaction) as they apply in a case where the original lease was granted before the implementation date—
    - (a) a reference to a lease to which paragraph 2 of that Schedule applies shall be read as a reference to a lease to which section 97 of the Finance Act 1980 applied (which made provision for stamp duty corresponding to that paragraph), and
    - (b) a reference to an election having been made for tax to be charged in accordance with paragraph 2 or 4 of that Schedule shall be read as a reference to the lease having contained a statement of the parties' intention such as is mentioned in section 97(2)(d) of the Finance Act 1980 or, as the case may be, paragraph (d) of section 108(5) of the Finance Act 1981 (which made provision for stamp duty corresponding to paragraph 4).”.
- (4) Subsections (1) and (2) apply in relation to an acquisition after 17th March 2004.
- (5) Subsection (3) is deemed to have come into force on 1st December 2003.

#### Commencement Information

**I15** S. 303 wholly in force at Royal Assent; s. 303(3) in force retrospective to 1.12.2003 see s. 303(5)

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### **304 Application to certain partnership transactions**

Schedule 41 to this Act (which makes provision with respect to the application of stamp duty land tax to certain transactions involving partnerships) has effect.

### **305 Liability of partners**

In paragraph 7 of Schedule 15 to the Finance Act 2003 (c. 14) (stamp duty land tax: joint and several liability of responsible partners) after sub-paragraph (1) insert—

“(1A) No amount may be recovered by virtue of sub-paragraph (1)(a) or (b) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable.”

## **PART 7**

### **DISCLOSURE OF TAX AVOIDANCE SCHEMES**

### **306 Meaning of “notifiable arrangements” and “notifiable proposal”**

- (1) In this Part “notifiable arrangements” means any arrangements which—
- (a) fall within any description prescribed by the Treasury by regulations,
  - (b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description, and
  - (c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.
- (2) In this Part “notifiable proposal” means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

#### **Commencement Information**

**I16** S. 306 wholly in force at 1.8.2004; s. 306 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### **307 Meaning of “promoter”**

- (1) For the purposes of this Part a person is a promoter—
- (a) in relation to a notifiable proposal, if, in the course of a relevant business—
    - (i) he is to any extent responsible for the design of the proposed arrangements, or
    - (ii) he makes the notifiable proposal available for implementation by other persons, and
  - (b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—
    - (i) the design of the arrangements, or

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- (ii) the organisation or management of the arrangements.
- (2) In this section “relevant business” means any trade, profession or business which—
- (a) involves the provision to other persons of services relating to taxation, or
  - (b) is carried on by a bank, as defined by section 840A of the Taxes Act 1988, or by a securities house, as defined by section 209A(4) of that Act.
- (3) For the purposes of this section anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within subsection (2)(b) carried on by another company which is a member of the same group.
- (4) Section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12) has effect for determining for the purposes of subsection (3) whether two companies are members of the same group, but as if in that section—
- (a) for each of the references to a 75 per cent subsidiary there were substituted a reference to a 51 per cent subsidiary, and
  - (b) subsection (3)(b) and subsections (6) to (8) were omitted.
- (5) A person is not to be treated as a promoter for the purposes of this Part by reason of anything done in prescribed circumstances.

#### **Commencement Information**

**117** S. 307 wholly in force at 1.8.2004; s. 307 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### **308 Duties of promoter**

- (1) The promoter must, within the prescribed period after the relevant date, provide the Board with prescribed information relating to any notifiable proposal.
- (2) In subsection (1) “the relevant date” means the earlier of the following—
- (a) the date on which the promoter makes a notifiable proposal available for implementation by any other person, or
  - (b) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the notifiable proposal.
- (3) The promoter must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of any notifiable arrangements, provide the Board with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under subsection (1).
- (4) Where two or more persons are promoters in relation to the same notifiable proposal or notifiable arrangements, compliance by any of them with subsection (1) or (3) discharges the duty under either of those subsections of the other or others.
- (5) Where a person is a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties), he need not provide information under subsection (1) or (3) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

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#### Commencement Information

**I18** S. 308 wholly in force at 1.8.2004; s. 308 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 309 Duty of person dealing with promoter outside United Kingdom

- (1) Any person (“the client”) who enters into any transaction forming part of any notifiable arrangements in relation to which—
  - (a) a promoter is resident outside the United Kingdom, and
  - (b) no promoter is resident in the United Kingdom,must, within the prescribed period after doing so, provide the Board with prescribed information relating to the notifiable arrangements.
- (2) Compliance with section 308(1) by any promoter in relation to the notifiable arrangements discharges the duty of the client under subsection (1).

#### Commencement Information

**I19** S. 309 wholly in force at 1.8.2004; s. 309 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 310 Duty of parties to notifiable arrangements not involving promoter

Any person who enters into any transaction forming part of notifiable arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with section 308 (duties of promoter) or section 309 (duty of person dealing with promoter outside the United Kingdom) must at the prescribed time provide the Board with prescribed information relating to the notifiable arrangements.

#### Commencement Information

**I20** S. 310 wholly in force at 1.8.2004; s. 310 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 311 Arrangements to be given reference number

- (1) Where a person complies with section 308(1) or (3), 309(1) or 310 in relation to any notifiable proposal or notifiable arrangements, the Board may within 30 days—
  - (a) allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements, and
  - (b) if it does so, notify the person of that number.
- (2) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by the Board that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage.
- (3) In this Part “reference number”, in relation to any notifiable arrangements, means the reference number allocated under this section.

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#### Commencement Information

**I21** S. 311 wholly in force at 1.8.2004; s. 311 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 312 Duty of promoter to notify client of number

- (1) Any promoter who is providing services to any person (“the client”) in connection with notifiable arrangements must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number that has been notified to the promoter by the Board—
  - (a) in relation to those arrangements, or
  - (b) in relation to arrangements which are substantially the same as those arrangements (whether made between the same parties or different parties).
- (2) In subsection (1) “the relevant date” means—
  - (a) the date on which the promoter first becomes aware of any transaction forming part of the notifiable arrangements, or
  - (b) if later, the date on which the number is notified to the promoter under section 311.

#### Commencement Information

**I22** S. 312 wholly in force at 1.8.2004; s. 312 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 313 Duty of parties to notifiable arrangements to notify Board of number, etc.

- (1) Any person who is a party to any notifiable arrangements must provide the Board with prescribed information relating to—
  - (a) any reference number notified to him under section 311 by the Board or under section 312 by the promoter, and
  - (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any relevant tax.
- (2) For the purposes of subsection (1) a tax is a “relevant tax” in relation to any notifiable arrangements if it is prescribed in relation to arrangements of that description by regulations under section 306.
- (3) Regulations under subsection (1) may—
  - (a) in prescribed cases, require the number and other information to be included in any return or account which the person is required by or under any enactment to deliver to the Board, and
  - (b) in prescribed cases, require the number and other information to be provided separately to the Board at the prescribed time or times.
- (4) A person is not liable to a penalty under—
  - (a) section 95 of the Taxes Management Act 1970 (c. 9) (incorrect return or accounts for income tax or capital gains tax),



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- (b) paragraph 8 of Schedule 2 to the Oil Taxation Act 1975 (c. 22) (incorrect returns and accounts for purposes of petroleum revenue tax),
- (c) section 247 of the Inheritance Tax Act 1984 (c. 51) (provision of incorrect information for purposes of inheritance tax),
- (d) any provision relating to incorrect or uncorrected returns made under section 98 of the Finance Act 1986 (c. 41) (administration of stamp duty reserve tax),
- (e) paragraph 20 of Schedule 18 to the Finance Act 1998 (c. 36) (incorrect or uncorrected return for corporation tax),
- (f) paragraph 8 of Schedule 10 to the Finance Act 2003 (c. 14) (incorrect or uncorrected return for purposes of stamp duty land tax), or
- (g) any other prescribed provision,

by reason of any failure to include in any return or account any reference number or other information required by virtue of subsection (3)(a) (but see section 98C of the Taxes Management Act 1970 for the penalty for failure to comply with this section).

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**Commencement Information**

**I23** S. 313 wholly in force at 1.8.2004; s. 313 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 314 Legal professional privilege

- (1) Nothing in this Part requires any person to disclose to the Board any privileged information.
- (2) In this Part “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

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**Commencement Information**

**I24** S. 314 wholly in force at 1.8.2004; s. 314 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

### 315 Penalties

- (1) After section 98B of the Taxes Management Act 1970 insert—

**“98C Notification under Part 7 of Finance Act 2004**

- (1) A person who fails to comply with any of the provisions of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) mentioned in subsection (2) below shall be liable—
  - (a) to a penalty not exceeding £5,000, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty

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under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).

- (2) Those provisions are—
- (a) section 308(1) and (3) (duty of promoter in relation to notifiable proposals and notifiable arrangements),
  - (b) section 309(1) (duty of person dealing with promoter outside United Kingdom),
  - (c) section 310 (duty of parties to notifiable arrangements not involving promoter), or
  - (d) section 312(1) (duty of promoter to notify client of reference number).
- (3) A person who fails to comply with section 313(1) of the Finance Act 2004 (duties of parties to notifiable arrangements to notify Board of reference number, etc.) shall be liable to a penalty of the relevant sum.
- (4) In subsection (3) above “the relevant sum” means—
- (a) in relation to a person not falling within paragraph (b) or (c) below, £100 in respect of each scheme to which the failure relates,
  - (b) in relation to a person who has previously failed to comply with section 313(1) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £500 in respect of each scheme to which the current failure relates (whether or not the same as the scheme to which the previous failure relates), or
  - (c) in relation to a person who has previously failed to comply with section 313(1) on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £1,000 in respect of each scheme to which the current failure relates (whether or not the same as the schemes to which any of the previous failures relates).
- (5) In subsection (4) above “scheme” means any notifiable arrangements within the meaning of Part 7 of the Finance Act 2004.”
- (2) In section 100 of that Act (determination of penalties by officer of Board) at the end of subsection (2) (penalties to which subsection (1) of the section does not apply) insert “, or
- (f) section 98C(1)(a) above.”
- (3) In section 100C of that Act (penalty proceedings before Commissioners) after subsection (1) insert—
- “(1A) In its application to a penalty under section 98C(1)(a) above, subsection (1) above has effect with the omission of the words “General or”.”

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**Commencement Information**

**I25** S. 315 wholly in force at 1.8.2004; s. 315 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

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### **316 Information to be provided in form and manner specified by Board**

The information required by section 308(1) or (3), 309(1), 310, 312(1) or 313(1) must be provided in a form and manner specified by the Board.

### **317 Regulations under Part 7**

- (1) Any power of the Treasury or the Board to make regulations under this Part is exercisable by statutory instrument.
- (2) Regulations made by the Treasury or the Board under this Part may contain transitional provisions and savings.
- (3) A statutory instrument containing regulations made by the Treasury or the Board under any provision of this Part is subject to annulment in pursuance of a resolution of the House of Commons.

### **318 Interpretation of Part 7**

- (1) In this Part—

“advantage”, in relation to any tax, means—

- (a) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an assessment to that tax or the avoidance of a possible assessment to that tax,
- (b) the deferral of any payment of tax or the advancement of any repayment of tax, or
- (c) the avoidance of any obligation to deduct or account for any tax;

“arrangements” includes any scheme, transaction or series of transactions;

“corporation tax” includes any amount which, by virtue of any of the provisions mentioned in paragraph 1 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns, assessments and related matters) is assessable and chargeable as if it were corporation tax;

“notifiable arrangements” has the meaning given by section 306(1);

“notifiable proposal” has the meaning given by section 306(2);

“prescribed”, except in section 306, means prescribed by regulations made by the Board;

“promoter”, in relation to notifiable arrangements or a notifiable proposal, has the meaning given by section 307;

“reference number”, in relation to notifiable arrangements, has the meaning given by section 311(3);

“tax” means—

- (a) income tax,
- (b) capital gains tax,
- (c) corporation tax,
- (d) petroleum revenue tax,
- (e) inheritance tax,
- (f) stamp duty land tax, or
- (g) stamp duty reserve tax.

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- (2) Subject to subsection (1), expressions which are defined in the Taxes Act 1988 for the purposes of the Tax Acts, as defined in section 831(2) of that Act, have the same meaning in this Part.

### **319 Part 7: commencement and savings**

- (1) The following provisions of this Part come into force on the passing of this Act—  
sections 306 to 315, so far as is necessary for enabling the making of any regulations for which they provide, and  
sections 317 and 318 and this section.
- (2) Except as provided by subsection (1), the provisions of this Part come into force on 1st August 2004.
- (3) Section 308 does not apply to a promoter in the case of—  
(a) any notifiable proposal as respects which the relevant date, as defined by subsection (2) of that section, fell before 18th March 2004,  
(b) any notifiable arrangements which implement such a proposal, or  
(c) any notifiable arrangements which include any transaction entered into before 18th March 2004.
- (4) Sections 309 and 310 do not apply in relation to notifiable arrangements which include any transaction entered into before 23rd April 2004.
- (5) Section 313 does not apply in relation to any notifiable arrangements in respect of which, by virtue of subsection (3) or (4), none of the duties imposed by sections 308 to 310 arises.

## **PART 8**

### MISCELLANEOUS MATTERS

### **320 Exclusion of extended limitation period in England, Wales and Northern Ireland**

- (1) Section 32(1)(c) of the Limitation Act 1980 (c. 58) or, in Northern Ireland, Article 71(1)(c) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (extended period for bringing an action in case of mistake) does not apply in relation to a mistake of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.

This subsection has effect in relation to actions brought on or after 8th September 2003.

- (2) For the purposes of—  
(a) section 35(5)(a) of the Limitation Act 1980 or, in Northern Ireland, Article 73(4)(a) of the Limitation (Northern Ireland) Order 1989 (circumstances in which time-barred claim may be brought in course of existing action), and  
(b) rules of court or county court rules having effect for the purposes of those provisions,  
as they apply to claims in respect of mistakes of the kind mentioned in subsection (1), a new claim shall not be regarded as arising out of the same facts, or substantially

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the same facts, if it is brought in respect of a different payment, transaction, period or other matter.

This subsection has effect in relation to claims made on or after 20th November 2003.

- (3) If before the passing of this Act—
- (a) an action is brought in relation to which a defence of limitation would have been available if subsection (1) had been in force, or
  - (b) a claim is made on or after 20th November 2003 that by virtue of section 35(1)(b) of the Limitation Act 1980 (c. 58) or, in Northern Ireland, Article 73(1)(b) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) is treated as an action brought before 8th September 2003 and that claim would not have been allowed if subsections (1) and (2) above had been in force,
- the action (or so much of it as relates to a cause of action in respect of which a defence of limitation would have been available or, as the case may be, a claim would not have been allowed) shall be deemed to be discontinued on the passing of this Act and any payment made by the Commissioners in or towards meeting their liability in the action (or so much of the action as so relates) may be recovered by them (with interest from the date of the payment).
- (4) Nothing in this section affects a claim made before 20th November 2003 that by virtue of section 35(1)(b) of the Limitation Act 1980 or, in Northern Ireland, Article 73(1)(b) of the Limitation (Northern Ireland) Order 1989 is treated as an action brought before 8th September 2003.
- (5) For the purposes of this section a claim is treated as made before 20th November 2003 if—
- (a) the Commissioners have before that date consented in writing to the making of the claim; or
  - (b) immediately before that date—
    - (i) the consent of the Commissioners has been sought and has not been refused, or
    - (ii) an application to the court for permission to make the claim has been made and has not been refused.
- (6) The provisions of this section apply to any action or claim for relief from the consequences of a mistake of law, whether expressed to be brought on the ground of mistake or on some other ground (such as unlawful demand or *ultra vires* act).
- (7) This section shall be construed as one with the Limitation Act 1980 or, in Northern Ireland, the Limitation (Northern Ireland) Order 1989.

### **321 Exclusion of extended prescriptive period in Scotland**

- (1) Section 6(4)(a)(ii) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (extinction of obligations by prescriptive period: exclusion of period during which creditor induced by error to refrain from making claim) does not apply in relation to an obligation based on redress of unjustified enrichment arising from an error of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.
- (2) Subsection (1) has effect in relation to an obligation in respect of which no relevant claim has been made before 8th September 2003.

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- (3) In the case of a relevant claim made on or after that date and before the passing of this Act relating to an obligation that would have been extinguished if subsections (1) and (2) had been in force—
- (a) proceedings on the claim (or so much of the proceedings as relates to such an obligation) shall be deemed to be discontinued on the passing of this Act, and
  - (b) any payment made by the Commissioners in or towards meeting their liability on the claim (or so much of it as so relates) may be recovered by them (with interest from the date of the payment).
- (4) The provisions of this section apply in relation to any relevant claim for redress of unjustified enrichment arising from an error of law, whether expressed to be made on the ground of error or on some other ground.
- (5) In this section “relevant claim” has the same meaning as in section 6 of the Prescription and Limitation (Scotland) Act 1973.

### **322 Mutual assistance: customs union with the Principality of Andorra**

- (1) The UK mutual assistance provisions have effect for the purposes of giving effect to the EC-Andorra Mutual Assistance Recovery Decision as they have effect for the purposes of giving effect to the Mutual Assistance Recovery Directive.
- (2) In this section—
- “the EC-Andorra Mutual Assistance Recovery Decision” means Chapter 2 of Title 1 of, and Annex 1 to, Decision No 1/2003 of the EC-Andorra Joint Committee of 3 September 2003 (on the laws, regulations and administrative provisions necessary for the proper functioning of the Customs Union between the European Community and the Principality of Andorra);
- “the Mutual Assistance Recovery Directive” has the same meaning as in the UK mutual assistance provisions;
- “the UK mutual assistance provisions” means the provisions of section 134 of the Finance Act 2002 (c. 23) (recovery of taxes etc due in other member States) and Schedule 39 to that Act.
- (3) In the UK mutual assistance provisions as they have effect in accordance with subsection (1)—
- (a) references (except those in section 134(2) and paragraph 1(2)(a) of Schedule 39) to the Mutual Assistance Recovery Directive shall be read as references to the EC-Andorra Mutual Assistance Recovery Decision,
  - (b) references to another member State shall be read as references to the Principality of Andorra,
  - (c) references to the competent authority of another member State shall be read as references to the competent authority of the Principality of Andorra,
  - (d) references to a tax authority in the United Kingdom, or to the relevant UK authority, shall be read as references to the Commissioners of Customs and Excise,
  - (e) the following provisions shall be treated as omitted—
    - (i) in section 134, subsections (3)(a), (4) and (5), and
    - (ii) in Schedule 39, paragraphs 2(2) and 3(3).
- (4) The powers in section 134(6) of the Finance Act 2002 and paragraph 3 of Schedule 39 to that Act may be exercised so as to make provision for the purposes of giving

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effect to the EC-Andorra Mutual Assistance Recovery Decision (or amendments of the Decision) which is different to that made for the purposes of giving effect to the Mutual Assistance Recovery Directive (or amendments of the Directive).

### **323 Ending of shipbuilders' relief**

- (1) Relief under section 2 of the Finance Act 1966 (c. 18) (relief for shipbuilders in respect of certain taxes and duties) is not available, and shall be regarded as never having been available, in any case where the contract mentioned in subsection (2) of that section is—
  - (a) a contract made on or after 1st January 2001 relating to a self-propelled sea-going commercial vessel, within the meaning of the 1998 Regulation, or
  - (b) in a case not falling within paragraph (a), a contract made on or after 13th January 2004.
- (2) In this section “the 1998 Regulation” means Council Regulation (EC) No 1540/ 98 of 29 June 1998 establishing new rules on aid to shipbuilding (under which operating aid for shipbuilding ended on 31st December 2000).

### **324 Government borrowing: preparations for possible adoption of Euro**

- (1) The Treasury may incur expenditure with a view to securing that they would be able to exercise their functions under sections 12 to 20A of (and Schedule 5A to) the National Loans Act 1968 (c. 13) (national debt and government accounting) if the United Kingdom were to adopt the single currency in accordance with the Treaty establishing the European Communities.
- (2) The Director of Savings may incur expenditure with a view to securing that he would be able to exercise his functions if the United Kingdom were to adopt the single currency in accordance with the Treaty establishing the European Communities.

### **325 Premium bonds**

Regulations under section 11 of the National Debt Act 1972 (c. 65) (power of Treasury to make regulations as to raising of money under auspices of Director of Savings) may repeal any provision contained in section 54 of, or Schedule 18 to, the Finance Act 1968 (c. 44) (terms of issue of premium savings bonds).

## **PART 9**

### **SUPPLEMENTARY PROVISIONS**

### **326 Repeals**

- (1) The enactments mentioned in Schedule 42 to this Act (which include provisions that are spent or of no practical utility) are repealed to the extent specified.
- (2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

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### **327 Interpretation**

In this Act “the Taxes Act 1988” means the Income and Corporation Taxes Act 1988 (c. 1).

### **328 Short title**

This Act may be cited as the Finance Act 2004.



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## SCHEDULES

### SCHEDULE 1

Section 4

#### NEW SCHEDULE 2A TO THE ALCOHOLIC LIQUOR DUTIES ACT 1979

The Schedule inserted before Schedule 3 to the Alcoholic Liquor Duties Act 1979 (c. 4) is as follows—

#### “SCHEDULE 2A

Section 64A

#### DUTY STAMPS

##### *Retail containers to be stamped*

- 1 (1) Retail containers of alcoholic liquors to which this Schedule applies shall be stamped—
  - (a) in such cases and circumstances, and with a duty stamp of such a type, as may be prescribed; but
  - (b) subject to such exceptions as may be prescribed.
- (2) In this Schedule “retail container”, in relation to an alcoholic liquor, means a container—
  - (a) of a capacity of 35 centilitres or more, and
  - (b) in which, or from which, the liquor is intended to be sold by retail.
- (3) This Schedule applies to the following alcoholic liquors—
  - (a) spirits;
  - (b) wine or made-wine of a strength exceeding 22 per cent.
- (4) For the purposes of this Schedule a retail container is “stamped” if—
  - (a) it carries a duty stamp of a type mentioned in sub-paragraph (5)(a) below which has been affixed to the container in a way that complies with the requirements of regulations under this Schedule, or
  - (b) it carries a label which has been so affixed to the container and the label incorporates a duty stamp of a type mentioned in sub-paragraph (5)(b) below.
- (5) In this Schedule “duty stamp” means any of the following—
  - (a) a document (a “type A stamp”) issued by or on behalf of the Commissioners which—
    - (i) is designed to be affixed to a retail container of alcoholic liquor, and
    - (ii) indicates that the appropriate duty, or an amount representing some or all of the appropriate duty, has been (or is to be) paid;
  - (b) a part of a label for a retail container of alcoholic liquor (a “type B stamp”) which—
    - (i) is incorporated in the label under the authority of the Commissioners, and

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- (ii) indicates that the appropriate duty, or an amount representing some or all of the appropriate duty, has been (or is to be) paid.
- (6) In sub-paragraph (5) above “the appropriate duty” means the duty chargeable on the quantity and description of alcoholic liquor contained, or to be contained, in the retail container to which the stamp, or the label incorporating the stamp, is, or is to be, affixed.

*Power to alter liquors, and capacity of container, to which this Schedule applies*

- 2 (1) The Treasury may by order made by statutory instrument amend paragraph (a) of paragraph 1(2) above for the purpose of varying the capacity from time to time specified in that paragraph.
- (2) The Treasury may by order made by statutory instrument amend paragraph 1(3) above for the purpose of causing this Schedule—
- (a) to apply to any description of alcoholic liquor to which it does not apply, or
  - (b) to cease to apply to any description of alcoholic liquor to which it does apply.
- (3) A statutory instrument containing an order under this paragraph shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

*Acquisition of and payment for duty stamps*

- 3 (1) The Commissioners may by regulations make provision as to the terms and conditions on which a person may obtain—
- (a) a type A stamp,
  - (b) authority to incorporate in a label a type B stamp,
  - (c) authority to obtain a label incorporating a type B stamp,
  - (d) authority to affix such a label to a retail container of alcoholic liquor.
- (2) Regulations under sub-paragraph (1) above may in particular make provision for or in connection with—
- (a) requiring a person in prescribed cases or circumstances to pay, or agree to pay, the prescribed amount to the Commissioners or to a person authorised by the Commissioners for this purpose;
  - (b) requiring a person in prescribed cases or circumstances to provide to the Commissioners such security as they may require in respect of payment of the appropriate duty.
- (3) An amount prescribed for the purposes of sub-paragraph (2)(a) above must not exceed the aggregate of—
- (a) an amount representing the appropriate duty, and
  - (b) in the case of a type A stamp, the cost of issuing the stamp.
- (4) Regulations under sub-paragraph (1) above may also in particular make provision for or in connection with requiring or enabling the Commissioners to bear, in prescribed circumstances, in the case of a type B stamp, all or part of so much of the cost of producing the label as is attributable to the incorporation in it of the stamp.
- (5) The whole of an amount payable for a duty stamp shall be treated for the purposes of the Customs and Excise Acts 1979 as an amount due by way of excise duty.

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- (6) In this paragraph “the appropriate duty” means the duty chargeable on the quantity and description of alcoholic liquor contained, or to be contained, in the retail container to which the stamp, or the label incorporating the stamp, is to be affixed.

### *Regulations*

- 4 (1) The Commissioners may by regulations make provision as to such matters relating to duty stamps as appear to them to be necessary or expedient.
- (2) Regulations under this Schedule may in particular make provision about—
- (a) the times at which a retail container must bear a duty stamp;
  - (b) the type of duty stamp (see paragraph 1(5)) with which a retail container is to be stamped in any particular case or circumstances;
  - (c) the design and appearance of a duty stamp (including the production of a label incorporating a type B stamp);
  - (d) the information that is to appear on a duty stamp;
  - (e) the cost of issuing a type A stamp for the purposes of paragraph 3(3)(b) above;
  - (f) the procedure for obtaining—
    - (i) a type A stamp,
    - (ii) authority to incorporate in a label a type B stamp,
    - (iii) authority to obtain a label incorporating a type B stamp,
    - (iv) authority to affix such a label to a retail container of alcoholic liquor, (including provision setting periods of notice);
  - (g) where on the container a type A stamp, or a label incorporating a type B stamp, is to be affixed;
  - (h) repayment of, or credit for, in prescribed circumstances and subject to such conditions as may be prescribed, all or part of a payment made under or by virtue of this Schedule to the Commissioners or to a person authorised by the Commissioners;
  - (i) liability to forfeiture in prescribed circumstances of some or all of a payment made, or security provided, under or by virtue of this Schedule to the Commissioners or to a person authorised by the Commissioners.
- (3) Regulations under this Schedule may also, in particular, make provision for or in connection with preventing a type A stamp, or a label incorporating a type B stamp, from being used by a person other than—
- (a) in the case of a type A stamp, the person to or for whom the stamp was issued or a person authorised by that person to affix the stamp to a retail container of alcoholic liquor,
  - (b) in the case of a type B stamp, the person to or for whom authority to obtain the label incorporating the stamp, or to affix that label to a retail container of alcoholic liquor, was given by the Commissioners.
- (4) Regulations under this Schedule may also, in particular, make provision—
- (a) for or in connection with requiring a person who is not established, and does not have any fixed establishment, in the United Kingdom, in prescribed circumstances, to appoint another person (a “duty stamps representative”) to act on his behalf in relation to duty stamps, and
  - (b) as to the rights, obligations or liabilities of duty stamps representatives.

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- (5) The Commissioners may, with a view to the protection of the revenue, make regulations for securing and collecting duty payable in accordance with this Schedule.
- (6) Regulations under this Schedule may make different provision for different cases.

*Offences of possession, sale etc of unstamped containers*

- 5 (1) Except in such cases as may be prescribed, a person commits an offence if he—
  - (a) is in possession of, transports or displays, or
  - (b) sells, offers for sale or otherwise deals in,
 unstamped retail containers containing alcoholic liquor to which this Schedule applies.
- (2) It is a defence for a person charged with an offence under this paragraph to prove that the retail containers in question were not required to be stamped.
- (3) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A retail container in relation to which an offence under this paragraph is committed is liable to forfeiture (together with its contents).

*Offence of using premises for sale of liquor in or from unstamped containers*

- 6 (1) A manager of premises commits an offence if—
  - (a) he suffers the premises to be used for the sale of liquor in an unstamped retail container, or for the sale of liquor that is from an unstamped retail container; and
  - (b) the liquor is alcoholic liquor to which this Schedule applies.
- (2) It is a defence for a person charged with an offence under this paragraph to prove that the retail container in question was not required to be stamped.
- (3) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where an offence is committed under this paragraph, all unstamped retail containers of alcoholic liquor to which this Schedule applies that are on the premises at the time of the offence are liable to forfeiture (together with their contents).
- (5) For the purposes of this Schedule a person is a “manager” of premises if he—
  - (a) is entitled to control their use,
  - (b) is entrusted with their management, or
  - (c) is in charge of them.

*Alcohol sales ban following conviction for offence under paragraph 6*

- 7 (1) A court by or before which a person is convicted of an offence under paragraph 6 above may make an order prohibiting the use of the premises in question for the sale of alcoholic liquors during a period specified in the order.
- (2) The period specified in an order under this paragraph shall not exceed six months; and the first day of the period shall be the day specified as such in the order.

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- (3) If a manager of premises suffers the premises to be used in breach of an order under this paragraph, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Penalty for altering duty stamps*

- 8 (1) This paragraph applies where a person—
- (a) alters a type A stamp, otherwise than in accordance with regulations under this Schedule, after it has been issued, or
  - (b) so alters a type B stamp after the label in which it is incorporated has been produced.
- (2) His conduct attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (3) The stamp, or the label in which it is incorporated, is liable to forfeiture.

*Penalty for affixing wrong, altered or forged stamps, or over-labelling*

- 9 (1) This paragraph applies where a person affixes to a retail container that is required to be stamped any of the items mentioned in sub-paragraphs (2) to (5) below.
- (2) The first is—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp,
- if the stamp is not a correct stamp for that container in accordance with regulations under this Schedule.
- (3) The second is—
- (a) a type A stamp that has been altered, otherwise than in accordance with regulations under this Schedule, after it has been issued, or
  - (b) a label incorporating a type B stamp if the stamp has been so altered after the label has been produced.
- (4) The third is an item that purports to be, but is not,—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp.
- (5) The fourth is any label or other item affixed in such a way as to cover up all or part of—
- (a) a type A stamp affixed to the container, or
  - (b) a type B stamp incorporated in a label affixed to the container,
- except where the label or other item is so affixed in accordance with regulations under this Schedule.
- (6) The person's conduct attracts a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (7) The container is liable to forfeiture (together with its contents).

*Penalty for failing to comply with regulations*

- 10 (1) If a person fails to comply with a requirement imposed by or under regulations under this Schedule—

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- (a) his conduct attracts a penalty under section 9 of the Finance Act 1994 (civil penalties);
  - (b) any article in respect of which he fails to comply with the requirement is liable to forfeiture (including, in the case of a container, its contents).
- (2) Regulations under this Schedule may make provision as to the amount by reference to which the penalty under sub-paragraph (1)(a) above is to be calculated.

*Forfeiture of forged, altered or stolen duty stamps*

- 11 (1) The following items are liable to forfeiture.
- (2) The first is an item that purports to be, but is not,—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp.
- (3) The second is—
- (a) a type A stamp that has been altered, otherwise than in accordance with regulations under this Schedule, after it has been issued, or
  - (b) a label incorporating a type B stamp if the stamp has been so altered after the label has been produced.
- (4) The third is—
- (a) a type A stamp, or
  - (b) a label incorporating a type B stamp,
- that is in a person’s possession unlawfully.

*Interpretation*

- 12 In this Schedule—
- “duty stamp” has the meaning given by paragraph 1(5) above;
  - “prescribed” means prescribed in regulations made by the Commissioners;
  - “retail container” has the meaning given by paragraph 1(2) above;
  - “stamped” and “unstamped” are to be read in accordance with paragraph 1(4) above;
  - “type A stamp” has the meaning given by paragraph 1(5)(a) above;
  - “type B stamp” has the meaning given by paragraph 1(5)(b) above.”.

SCHEDULE 2

Section 19

DISCLOSURE OF VALUE ADDED TAX AVOIDANCE SCHEMES

**PART 1**

PRINCIPAL AMENDMENTS OF VALUE ADDED TAX ACT 1994

- 1 After section 58 of the Value Added Tax Act 1994 (c. 23) insert—

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*“Disclosure of avoidance schemes*

**58A Disclosure of avoidance schemes**

Schedule 11A (which imposes disclosure requirements relating to the use of schemes for avoiding VAT) shall have effect.”.

**Commencement Information**

**I26** Sch. 2 para. 1 wholly in force at 1.8.2004; Sch. 2 para. 1 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 1 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

2 After Schedule 11 to that Act insert—

“SCHEDULE  
11A

Section 58A

DISCLOSURE OF AVOIDANCE SCHEMES

*Interpretation*

- 1 In this Schedule—
- “designated scheme” has the meaning given by paragraph 3(4);
  - “notifiable scheme” has the meaning given by paragraph 5(1);
  - “scheme” includes any arrangements, transaction or series of transactions;
  - “tax advantage” is to be read in accordance with paragraph 2.

*Obtaining a tax advantage*

- 2 (1) For the purposes of this Schedule, a person obtains a tax advantage if—
- (a) in any prescribed accounting period, the amount by which the output tax accounted for by him exceeds the input tax deducted by him is less than it otherwise would be, or
  - (b) he obtains a VAT credit when he would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case.
- (2) A person also obtains a tax advantage for the purposes of this Schedule if, in a case where he recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case.

*Designation by order of avoidance schemes*

- 3 (1) If it appears to the Treasury—
- (a) that a scheme of a particular description has been, or might be, entered into for the purpose of enabling any person to obtain a tax advantage, and

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- (b) that it is unlikely that persons would enter into a scheme of that description unless the main purpose, or one of the main purposes, of doing so was the obtaining by any person of a tax advantage,
- the Treasury may by order designate that scheme for the purposes of this paragraph.
- (2) A scheme may be designated for the purposes of this paragraph even though the Treasury are of the opinion that no scheme of that description could as a matter of law result in the obtaining by any person of a tax advantage.
- (3) The order must allocate a reference number to each scheme.
- (4) In this Schedule “designated scheme” means a scheme of a description designated for the purposes of this paragraph.

*Designation by order of provisions included  
 in or associated with avoidance schemes*

- 4 (1) If it appears to the Treasury that a provision of a particular description is, or is likely to be, included in or associated with schemes that are entered into for the purpose of enabling any person to obtain a tax advantage, the Treasury may by order designate that provision for the purposes of this paragraph.
- (2) A provision may be designated under this paragraph even though it also appears to the Treasury that the provision is, or is likely to be, included in or associated with schemes that are not entered into for the purpose of obtaining a tax advantage.
- (3) In this paragraph “provision” includes any agreement, transaction, act or course of conduct.

*Meaning of “notifiable scheme”*

- 5 (1) For the purposes of this Schedule, a scheme is a “notifiable scheme” if—
- (a) it is a designated scheme, or
- (b) although it is not a designated scheme, conditions A and B below are met in relation to it.
- (2) Condition A is that the scheme includes, or is associated with, a provision of a description designated under paragraph 4.
- (3) Condition B is that the scheme has as its main purpose, or one of its main purposes, the obtaining of a tax advantage by any person.

*Duty to notify Commissioners*

- 6 (1) This paragraph applies in relation to a taxable person where—
- (a) the amount of VAT shown in a return in respect of a prescribed accounting period as payable by or to him is less than or greater than it would be but for any notifiable scheme to which he is party, or
- (b) he makes a claim for the repayment of output tax or an increase in credit for input tax in respect of any prescribed accounting period in respect of which he has previously delivered a return and the amount claimed is greater than it would be but for such a scheme.



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- (2) Where the scheme is a designated scheme, the taxable person must notify the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, of the reference number allocated to the scheme under paragraph 3(3).
- (3) Where the scheme is not a designated scheme, the taxable person must, subject to sub-paragraph (4), provide the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, with prescribed information relating to the scheme.
- (4) Sub-paragraph (3) does not apply where the scheme is one in respect of which any person has previously—
  - (a) provided the Commissioners with prescribed information under paragraph 9, and
  - (b) provided the taxable person with a reference number notified to him by the Commissioners under paragraph 9(2)(b).
- (5) The taxable person is not obliged to comply with sub-paragraph (2) or (3) in relation to any scheme if he has on a previous occasion complied with that sub-paragraph in relation to that scheme.
- (6) This paragraph has effect subject to paragraph 7.

*Exemptions from duty to notify under paragraph 6*

- 7 (1) Paragraph 6 does not apply to a taxable person in relation to a scheme—
  - (a) where the taxable person is not a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person, or
  - (b) where the taxable person is a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person and every other group undertaking.
- (2) Condition A is that the total value of the person's taxable supplies and exempt supplies in the period of twelve months ending immediately before the beginning of the relevant period is less than the minimum turnover.
- (3) Condition B is that the total value of the person's taxable supplies and exempt supplies in the prescribed accounting period immediately preceding the relevant period is less than the appropriate proportion of the minimum turnover.
- (4) In sub-paragraphs (2) and (3) "the minimum turnover" means—
  - (a) in relation to a designated scheme, £600,000, and
  - (b) in relation to any other notifiable scheme, £10,000,000.
- (5) In sub-paragraph (3) "the appropriate proportion" means the proportion which the length of the prescribed accounting period bears to twelve months.
- (6) The value of a supply of goods or services shall be determined for the purposes of this paragraph on the basis that no VAT is chargeable on the supply.

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- (7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (4)(a) or (b) such other sum as they think fit.
- (8) This paragraph has effect subject to paragraph 8.
- (9) In this paragraph—
  - “relevant period” means the prescribed accounting period referred to in paragraph 6(1)(a) or (b);
  - “undertaking” and “group undertaking” have the same meanings as in Part 7 of the Companies Act 1985.

*Power to exclude exemption*

- 8 (1) The purpose of this paragraph is to prevent the maintenance or creation of any artificial separation of business activities carried on by two or more persons from resulting in an avoidance of the obligations imposed by paragraph 6.
- (2) In determining for the purposes of sub-paragraph (1) whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.
- (3) If the Commissioners make a direction under this section—
  - (a) the persons named in the direction shall be treated for the purposes of paragraph 7 as a single taxable person carrying on the activities of a business described in the direction with effect from the date of the direction or, if the direction so provides, from such later date as may be specified in the direction, and
  - (b) if paragraph 7 would not exclude the application of paragraph 6, in respect of any notifiable scheme, to that single taxable person, it shall not exclude the application of paragraph 6, in respect of that scheme, to the persons named in the direction.
- (4) The Commissioners shall not make a direction under this section naming any person unless they are satisfied—
  - (a) that he is making or has made taxable or exempt supplies,
  - (b) that the activities in the course of which he makes those supplies form only part of certain activities, the other activities being carried on concurrently or previously (or both) by one or more other persons, and
  - (c) that, if all the taxable and exempt supplies of the business described in the direction were taken into account, conditions A and B in paragraph 7(2) and (3), as those conditions have effect in relation to designated schemes, would not be met in relation to that business.
- (5) A direction under this paragraph shall be served on each of the persons named in it.
- (6) A direction under this paragraph remains in force until it is revoked or replaced by a further direction.

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*Voluntary notification of avoidance scheme that is not designated scheme*

- 9 (1) Any person may, at any time, provide the Commissioners with prescribed information relating to a scheme or proposed scheme of a particular description which is (or, if implemented, would be) a notifiable scheme by virtue of paragraph 5(1)(b).
- (2) On receiving the prescribed information, the Commissioners may—
- (a) allocate a reference number to the scheme (if they have not previously done so under this paragraph), and
  - (b) notify the person who provided the information of the number allocated.

*Penalty for failure to notify use of notifiable scheme*

- 10 (1) A person who fails to comply with paragraph 6 shall be liable, subject to sub-paragraphs (2) and (3), to a penalty of an amount determined under paragraph 11.
- (2) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the failure.
- (3) Where, by reason of conduct falling within sub-paragraph (1)—
- (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,
- that conduct shall not give rise to a penalty under this paragraph.

*Amount of penalty*

- 11 (1) Where the failure mentioned in paragraph 10(1) relates to a notifiable scheme that is not a designated scheme, the amount of the penalty is £5,000.
- (2) Where the failure mentioned in paragraph 10(1) relates to a designated scheme, the amount of the penalty is 15 per cent. of the VAT saving (as determined under sub-paragraph (3)).
- (3) For this purpose the VAT saving is—
- (a) to the extent that the case falls within paragraph 6(1)(a), the aggregate of—
    - (i) the amount by which the amount of VAT that would, but for the scheme, have been shown in returns in respect of the relevant periods as payable by the taxable person exceeds the amount of VAT that was shown in those returns as payable by him, and
    - (ii) the amount by which the amount of VAT that was shown in such returns as payable to the taxable person exceeds the amount of VAT that would, but for the scheme, have been shown in those returns as payable to him, and

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- (b) to the extent that the case falls within paragraph 6(1)(b), the amount by which the amount claimed exceeds the amount which the taxable person would, but for the scheme, have claimed.
- (4) In sub-paragraph (3)(a) “the relevant periods” means the prescribed accounting periods beginning with that in respect of which the duty to comply with paragraph 6 first arose and ending with the earlier of the following—
  - (a) the prescribed accounting period in which the taxable person complied with that paragraph, and
  - (b) the prescribed accounting period immediately preceding the notification by the Commissioners of the penalty assessment.

#### *Penalty assessments*

- 12 (1) Where any person is liable under paragraph 10 to a penalty of an amount determined under paragraph 11, the Commissioners may, subject to sub-paragraph (3), assess the amount due by way of penalty and notify it to him accordingly.
- (2) The fact that any conduct giving rise to a penalty under paragraph 10 may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
- (3) In a case where the penalty falls to be calculated by reference to the VAT saving as determined under paragraph 11(3) and the VAT that would, but for the scheme, have been shown in returns as payable by or to the taxable person cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of this Schedule as VAT that would, but for the scheme, have been shown as payable by or to the taxable person in returns for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the penalty.
- (4) No assessment to a penalty under this paragraph shall be made more than two years from the time when facts sufficient, in the opinion of the Commissioners, to indicate that there has been a failure to comply with paragraph 6 in relation to a notifiable scheme came to the Commissioners' knowledge.
- (5) Where the Commissioners notify a person of a penalty in accordance with sub-paragraph (1), the notice of assessment shall specify—
  - (a) the amount of the penalty,
  - (b) the reasons for the imposition of the penalty,
  - (c) how the penalty has been calculated, and
  - (d) any reduction of the penalty in accordance with section 70.
- (6) Where a person is assessed under this paragraph to an amount due by way of penalty and is also assessed under section 73(1), (2), (7), (7A) or (7B) for any of the prescribed accounting periods to which the assessment under this paragraph relates, the assessments may be combined and notified to him as one assessment, but the amount of the penalty shall be separately identified in the notice.

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- (7) If an amount is assessed and notified to any person under this paragraph, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were VAT due from him.
- (8) Subsection (10) of section 76 (notification to certain persons acting for others) applies for the purposes of this paragraph as it applies for the purposes of that section.

### Penalty assessments

- 13 Regulations under this Schedule—
- (a) may make different provision for different circumstances, and
  - (b) may include transitional provisions or savings.”.

#### Commencement Information

**I27** Sch. 2 para. 2 wholly in force at 1.8.2004; Sch. 2 para. 2 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 2 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

## PART 2

### CONSEQUENTIAL AMENDMENTS

- 3 In section 70 of the Value Added Tax Act 1994 (c. 23) (mitigation of penalties), in subsection (1) after “69A” insert “ or under paragraph 10 of Schedule 11A ”.

#### Commencement Information

**I28** Sch. 2 para. 3 wholly in force at 1.8.2004; Sch. 2 para. 3 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 3 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

- 4 In section 83 of that Act (appeals) after paragraph (z) insert—
- “(za) a direction under paragraph 8 of Schedule 11A,
  - (zb) any liability to a penalty under paragraph 10(1) of Schedule 11A, any assessment under paragraph 12(1) of that Schedule or the amount of such an assessment;”.

#### Commencement Information

**I29** Sch. 2 para. 4 wholly in force at 1.8.2004; Sch. 2 para. 4 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 4 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

- 5 (1) Section 84 of that Act (further provisions relating to appeals) is amended as follows.
- (2) In subsection (3), for “or (ra)” substitute “, (ra) or (zb) ”.
- (3) After subsection (6) insert—
- “(6A) Without prejudice to section 70, nothing in section 83(zb) shall be taken to confer on a tribunal any power to vary an amount assessed by way of

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penalty except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 11 of Schedule 11A.”.

**Commencement Information**

**I30** Sch. 2 para. 5 wholly in force at 1.8.2004; Sch. 2 para. 5 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 5 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

- 6 In section 97 of that Act (orders, rules and regulations) in subsection (4) (which lists powers exercisable subject to affirmative procedure in the House of Commons) after paragraph (f) insert—  
 “(g) an order under paragraph 3 or 4 of Schedule 11A.”.

**Commencement Information**

**I31** Sch. 2 para. 6 wholly in force at 1.8.2004; Sch. 2 para. 6 in force for specified purposes at Royal Assent, see s. 19(2); Sch. 2 para. 6 in force otherwise at 1.8.2004 by S.I. 2004/1934, art. 2

SCHEDULE 3

Section 28

CORPORATION TAX: THE NON-CORPORATE DISTRIBUTION RATE: SUPPLEMENTARY PROVISIONS

**PART 1**

GENERAL PROVISIONS

*Introduction*

- 1 The provisions of this Schedule supplement section 13AB (corporation tax: the non-corporate distribution rate).

*Meaning of “non-corporate distribution”*

- 2 (1) A “non-corporate distribution” means a distribution made by a company to a recipient who is not a company.  
 “Recipient” here means the person beneficially entitled to the distribution.
- (2) A distribution made to a partnership is treated as made to the partners notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

*Calculation of company’s “underlying rate of corporation tax”*

- 3 (1) A company’s underlying rate of corporation tax for an accounting period is determined as follows:

*Step One*

Take the company’s basic profits for the accounting period (“BP”).

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### *Step Two*

Find the amount of corporation tax chargeable on those profits apart from section 13AB (“CT”).

### *Step Three*

The company’s underlying rate of corporation tax is the percentage determined as follows—

$$\left( \frac{\text{CT}}{\text{BP}} \right) \times 100$$

(2) In determining CT—

- (a) apply the rate of corporation tax fixed for companies generally, and
- (b) if the company is entitled to and claims relief under section 13 (small companies' relief) or section 13AA (corporation tax starting rate), apply the provisions of those sections.

But take no account of any other relief that is given by reducing the amount or rate of tax payable (as opposed to the amount of the profits chargeable to tax).

#### *Matching: distributions not exceeding basic profits*

- 4 Where in an accounting period the total amount of the distributions made (or treated as made) by a company does not exceed the amount of its basic profits, the amount of the company’s basic profits matched with non-corporate distributions is equal to the total amount of the non-corporate distributions made (or treated as made) by the company in that period.

#### *Matching: distributions exceeding basic profits*

- 5 Where in an accounting period the total amount of the distributions made (or treated as made) by a company exceeds its basic profits, the amount of the company’s basic profits for that period matched with non-corporate distributions is—

## **PART 2**

### **ALLOCATION OF EXCESS NCDs TO OTHER COMPANIES**

#### *Allocation of excess NCDs to other companies*

- 6 (1) This Part of this Schedule provides for the allocation to other companies of any amount by which the total amount of the non-corporate distributions made (or treated as made) by a company (the “distributing company”) in an accounting period (the “distribution period”) exceeds the amount of the company’s basic profits for that period that are matched under paragraph 5.
- (2) That amount is referred to in this Schedule as “excess NCDs”.

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- (3) A company to which an amount of excess NCDs is allocated (a “recipient company”) is treated as if it had made a non-corporate distribution of that amount in the period to which it is allocated.

*Allocation of excess NCDs to other group companies*

- 7 (1) If at the end of the distribution period the distributing company is a member of a group, excess NCDs must be allocated, so far as possible, to the other group companies.

The allocation must be made in accordance with the following rules.

- (2) Excess NCDs may not be allocated to a recipient company unless it has available profits for the accounting period to which they are to be allocated.
- (3) The amount of a recipient company’s available profits for an accounting period is given by:

$$BP - NCD$$

where—

BP is the amount of that company’s basic profits for that accounting period, and

NCD is the total amount of non-corporate distributions made (or treated as made) by that company in that period.

- (4) The maximum amount of excess NCDs that may be allocated to an accounting period of a recipient company is:

$$\left( \frac{NCD}{D} \right) \times AP$$

where—

NCD is the total amount of the non-corporate distributions made (or treated as made) by the distributing company in the distribution period;

D is the total amount of all the distributions made (or treated as made) by that company in that period; and

AP is the amount of the recipient company’s available profits for that period.

- (5) In determining the amount of a company’s available profits at any time account shall only be taken of excess NCDs allocated to it by virtue of an allocation made before that time that remains (or so far as it remains) effective.

*Allocation of excess NCDs: period or periods to which amount to be allocated*

- 8 (1) Excess NCDs falling to be allocated to another company under paragraph 7 (allocation to other group companies) may be allocated to any accounting period identified by this paragraph as a corresponding accounting period.



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If there is more than one such period, excess NCDs must be allocated to the first to the full extent possible before any allocation is made to the second, and so on.

- (2) The accounting period of a recipient company that includes the last day of the distribution period is its first corresponding accounting period.

Unless that accounting period is shorter than the distribution period, it is the recipient company's only corresponding accounting period.

- (3) If the first corresponding accounting period is shorter than the distribution period, any subsequent accounting period of the recipient company beginning before the end of the period specified in sub-paragraph (4) is a corresponding accounting period.
- (4) The period referred to in sub-paragraph (3) is a period—
- (a) of the same length as the distribution period, and
  - (b) beginning on the same day as the recipient company's first corresponding accounting period.

*Allocation of excess NCDs: degrouping*

- 9 (1) This paragraph applies where a company ("company A") ceases to be a member of the same group as another company ("company B") but the companies remain under the control of the same person or persons.

This is referred to below as "degrouping".

- (2) If at the end of any accounting period of company A ending on or after the degrouping but no more than two years after the degrouping—
- (a) company A has excess NCDs that (apart from this paragraph) cannot be allocated to other companies,
  - (b) the business activities of company A and any other companies in the same group as that company are negligible, and
  - (c) the business activities of company B and any other companies in the same group as that company are not negligible,
- the provisions of sub-paragraphs (3) to (5) below apply.

The end of the accounting period when the above conditions are met is referred to in those provisions as "the relevant time".

- (3) Company B and any other companies in the same group as that company at the relevant time (the "B group") shall be treated for the purposes of allocating the excess NCDs as if they were members of the same group as company A.
- (4) Any excess NCDs remaining after any allocation made by virtue of sub-paragraph (3) must be allocated—
- (a) to company B or, if different, the company in the B group that at the relevant time has the greatest number of members who are not companies, and
  - (b) to the accounting period of that company that includes the relevant time.

This allocation is not subject to the restrictions in paragraph 7 on the amount that may be allocated to another company.

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- (5) If there is more than one company answering the description in sub-paragraph (4) (a), the excess NCDs shall be apportioned between them according to the amount of their basic profits for the accounting period to which the amount falls to be allocated.
- (6) In this paragraph “control” shall be construed in accordance with section 416(2) to (6).

*Allocation of excess NCDs: procedure*

- 10 (1) The basic rule is that the allocation of excess NCDs to another company must be made by the distributing company with the agreement of the recipient company.
- (2) If excess NCDs are not so allocated within nine months after—
- (a) in a case within paragraph 7, the end of the distribution period, or
  - (b) in a case within paragraph 9, the relevant time within the meaning of that paragraph,
- they may be allocated at any time thereafter by an officer of the Board.
- (3) An allocation under sub-paragraph (1) or (2) may be varied—
- (a) by agreement between the relevant companies, or
  - (b) if further excess NCDs are required to be allocated and no variation is agreed within one year after its becoming apparent that a variation is required, by an officer of the Board.

Any such variation may in turn be varied as mentioned in paragraph (a) or (b).

- (4) No allocation or variation of an allocation of excess NCDs may be made after the end of the period of one year after whichever of the following last occurs—
- (a) the final determination of the tax affairs of the distributing company in relation to the distribution period,
  - (b) in a case within paragraph 7, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods that are or could be corresponding accounting periods, or
  - (c) in a case within paragraph 9, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods to which an allocation may be made under that paragraph.
- (5) If circumstances arise as a result of which the tax affairs of any such company for any such period are reopened, an allocation or variation of an allocation may (and shall if necessary) be made at any time before the end of the period of one year after the tax affairs of the company are again finally determined.
- (6) For the purposes of sub-paragraphs (4) and (5) the tax affairs of a company for a period are finally determined when the amounts are conclusively determined within the meaning of paragraph 88 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns: conclusiveness of amounts stated in return).
- (7) References in this paragraph to variation of an allocation include reducing the amount allocated to nil.

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*Allocation of excess NCDs: amounts proving to be excessive*

- 11 (1) This paragraph applies where an amount of excess NCDs allocated to another company in accordance with this Part of this Schedule later proves to be excessive.
- (2) The excess shall revert to the distributing company.
- (3) If allocations to two or more companies are involved, the amounts shall revert in the opposite order to that in which the allocations were made.
- (4) In the case of allocations made at the same time, the amounts reverting to the distributing company shall be in proportion to the original allocations.

*Allocation of excess NCDs to companies not resident in the United Kingdom*

- 12 (1) The provisions of this Part of this Schedule as to the allocation of excess NCDs to other companies apply, with any necessary modifications, to companies that are not resident in the United Kingdom as they apply to companies that are so resident.
- (2) In particular, references to the company's basic profits and accounting periods shall be read in relation to a company that is not resident in the United Kingdom as references to what would have been the case if the company had been resident in the United Kingdom at all material times.

### PART 3

#### OTHER SUPPLEMENTARY PROVISIONS

*Carry forward of excess NCDs*

- 13 (1) Any excess NCDs not allocated to another company under Part 2 shall be carried forward by the distributing company.
- (2) That company shall be treated as if it had made a non-corporate distribution of the amount carried forward (in addition to any distributions actually made by it) in its next accounting period.
- (3) Where an allocation is made under paragraph 9(4) references in this paragraph to the distributing company shall be read as references to the company to which that allocation is made (which is treated by virtue of paragraph 6(3) as having made a distribution in the accounting period to which the allocation is made).

*Definition of a group*

- 14 (1) For the purposes of section 13AB and this Schedule a company and all its 51% subsidiaries form a group, and if any of those subsidiaries have 51% subsidiaries the group includes them and their 51% subsidiaries, and so on.
- (2) The question whether a company is a 51% subsidiary shall be determined in accordance with section 838, subject to the following provisions.
- (3) A company ("company A") shall be treated for the purposes of this Schedule as if it were a 51% subsidiary of another company ("company B") if company B has rights to, or in fact receives, more than 50% of the distributions made by company A.

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- (4) For the purposes of this paragraph a company shall be treated as not being the owner—
- (a) of any share capital that it owns directly if a profit on the sale of the shares would be treated as a trading receipt of its trade, or
  - (b) of any share capital that it owns indirectly and that is owned directly by a body corporate for which a profit on the sale of the shares would be treated as a trading receipt of its trade.

*Accounting period treated as ending if company ceases to be a member of a group*

- 15 (1) Section 13AB and this Schedule apply in relation to an accounting period of a company in which it ceases to be a member of the group as if there were two accounting periods, one ending immediately before the company ceases to be a member of the group and the other consisting of the remainder of the period.
- (2) For this purpose a company ceases to be in a group if it and another company cease to be in the same group, whether as a result it is no longer in a group, becomes a member of another group or continues to be in the same group as one or more other companies.

*Treatment of distributions made otherwise than in an accounting period*

- 16 For the purposes of section 13AB and this Schedule, a non-corporate distribution made by a company otherwise than in an accounting period of the company shall be treated as made in the next accounting period of the company.

*Holding companies treated as carrying on a business*

- 17 (1) For the purposes of section 13AB and this Schedule a holding company that is not otherwise carrying on a business shall be deemed to be carrying on a business and to be within the charge to corporation tax.
- (2) For this purpose “a holding company” means a company that has one or more 51% subsidiaries from which it receives or has received one or more distributions.

*Interpretation*

- 18 In section 13AB and this Schedule—
- “basic profits” means the amount of a company’s profits for an accounting period on which corporation tax finally falls to be borne;
  - “corresponding accounting period”, in relation to a recipient company, has the meaning given by paragraph 8;
  - “distributing company” has the meaning given by paragraph 6(1);
  - “distribution” does not include an amount treated as a dividend under paragraph 2(2) of Schedule 23A (manufactured dividends and interest);
  - “distribution period” has the meaning given by paragraph 6(1); and
  - “excess NCDs” has the meaning given by paragraph 6(2);
  - “group” has the meaning given by paragraph 14 (and references to a group company and membership of a group have a corresponding meaning);
  - “non-corporate distribution” has the meaning given by paragraph 2;
  - “recipient company” has the meaning given by paragraph 6(3);

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“underlying rate of corporation tax” has the meaning given by paragraph 3.

## SCHEDULE 4

Section 29

### AMENDMENTS RELATING TO THE RATE APPLICABLE TO TRUSTS

#### *Sums paid to settlor otherwise than as income*

F42<sup>1</sup> .....

#### Textual Amendments

**F42** Sch. 4 para. 1 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 3](#) (with [Sch. 2](#))

#### *Trustees chargeable to income tax at 30 per cent in certain cases*

2 The side-note to section 694 of the Taxes Act 1988 becomes “Trustees chargeable to income tax in certain cases at higher rate reduced by rate applicable to trusts”.

#### *Commencement*

F43<sup>3</sup> .....

#### Textual Amendments

**F43** Sch. 4 para. 3 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 3](#) (with [Sch. 2](#))

## SCHEDULE 5

Section 30

### PROVISION NOT AT ARM’S LENGTH: RELATED AMENDMENTS

#### *Taxes Management Act 1970*

#### *Notice of enquiry*

- 1 (1) Section 9A of the Taxes Management Act 1970 (c. 9) is amended as follows.
  - (2) For subsection (4) (scope of inquiry) substitute—
    - “(4) An enquiry extends to—
      - (a) anything contained in the return, or required to be contained in the return, including any claim or election included in the return,
      - (b) consideration of whether to give the taxpayer a transfer pricing notice under paragraph 5C of Schedule 28AA to the principal Act (provision not at arm’s length: medium-sized enterprise),

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but this is subject to the following limitation.”.

*Income and Corporation Taxes Act 1988*

*Valuation of trading stock at discontinuance of trade*

- 2 (1) Section 100 of the Taxes Act 1988 is amended as follows.  
 (2) After subsection (1) insert—

“(1ZA) This section does not apply in relation to any trading stock if paragraph 1(2) of Schedule 28AA (provision not at arm's length) has effect in relation to any provision made or imposed in relation to that stock and having effect in connection with the discontinuance of the trade.”.

*Petroleum extraction activities: ring fence trade: charges on income*

- 3 (1) Section 494 of the Taxes Act 1988 (charges on income) is amended as follows.  
 (2) In subsection (2) (which restricts the loan relationship debits that may be brought into account in a manner resulting in reduction of ring fence profits)—  
 (a) at the end of paragraph (b) insert “ and ”;  
 (b) omit paragraph (d) (which imposes a restriction by reference to a reasonable commercial rate of return and is superseded by the application of paragraphs 1A and 1B of Schedule 28AA to the Taxes Act 1988 by virtue of paragraph 11 of that Schedule);  
 (c) omit the third sentence (which defines “net debit” for the purposes of paragraph (d)).  
 (3) Omit subsection (2B) (which relates to the net debit within the meaning of subsection (2)(d)).

*Assumptions for calculating chargeable profits etc: transfer pricing*

- 4 In Schedule 24 to the Taxes Act 1988, paragraph 20 shall cease to have effect.

*Finance Act 1996*

*Loan relationships: introductory*

- 5 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

*Transactions not at arm's length*

- 6 (1) Paragraph 11 is amended as follows.  
 (2) In sub-paragraph (1) (which is expressed to be subject to sub-paragraphs (2) to (3A)) for “(2)” substitute “ (1A) ”.  
 (3) After sub-paragraph (1) insert—  
 “(1A) Notwithstanding section 80(5) of this Act, sub-paragraph (1) above shall not apply to debits or credits in respect of amounts which—  
 (a) fall to be adjusted for tax purposes under Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), or  
 (b) fall within that Schedule without falling to be so adjusted.  
 (1B) For the purposes of sub-paragraph (1A) above, an amount falls within Schedule 28AA to the Taxes Act 1988 without falling to be adjusted under that Schedule in a case where—

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- (a) the conditions in paragraph 1(1) of that Schedule are met, and
- (b) the actual provision does not differ from the arm's length provision.”.

*Continuity of treatment: groups etc.*

7 (1) Paragraph 12 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2ZA) Where the debits or credits to be brought into account for the purposes of this Chapter in respect of any amounts fall to be determined in accordance with sub-paragraph (2) above, Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) does not apply in relation to those amounts.”.

*Amounts imputed under Schedule 28AA to the Taxes Act 1988*

8 For paragraph 16 (imputed interest) substitute—

*“Amounts imputed under Schedule 28AA to the Taxes Act 1988*

16 (1) This paragraph applies where, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), an amount falls to be treated as any of the following—

- (a) an amount of profits, gains or losses (whether or not of a capital nature) arising to a company from any of its loan relationships or related transactions;
- (b) interest payable under any of a company's loan relationships;
- (c) charges or expenses incurred by a company under or for the purposes of any of its loan relationships or related transactions.

(2) That Schedule shall have effect, notwithstanding the provisions of any authorised accounting method, so as to require credits or debits relating to the amount so treated to be brought into account for the purposes of this Chapter to the same extent as they would be in the case of an actual amount of—

- (a) profits, gains or losses (whether or not of a capital nature) arising to the company from the loan relationship or related transaction,
- (b) interest accruing or becoming due and payable under the loan relationship, or
- (c) charges or expenses incurred under or for the purposes of the loan relationship or related transaction,

as the case may be.”.

#### *Finance Act 1998*

*Introductory*

9 The Finance Act 1998 (c. 36) is amended as follows.

*Scope of enquiry*

10 (1) In Schedule 18 (company tax returns, assessments and related matters) paragraph 25 is amended as follows.

(2) In sub-paragraph (1), for the words following paragraph (b) substitute— “ and also extends to consideration of whether to give the company a transfer pricing notice under paragraph 5C of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length: medium-sized enterprise). But this is subject to the following limitation. ”.

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### *Finance Act 2000*

#### *Introductory: tonnage tax: transactions not at arm’s length*

11 Schedule 22 to the Finance Act 2000 (c. 17) (tonnage tax) is amended as follows.  
*Transactions between tonnage tax company and another person*

12 (1) Paragraph 58 is amended as follows.

- (2) In sub-paragraph (1) (Schedule 28AA to the Taxes Act 1988 to apply with certain omissions) for the words following paragraph (b) substitute— “ Schedule 28AA to the Taxes Act 1988 (transactions not at arm’s length) has effect with the omission of paragraphs 6 to 7A (elimination of double counting etc). ”.

#### *Transactions between tonnage tax trade and other activities of same company*

13 (1) Paragraph 59 is amended as follows.

- (2) For sub-paragraph (2) (Schedule 28AA to the Taxes Act 1988 to apply with certain omissions) substitute—

“(2) As applied by sub-paragraph (1), Schedule 28AA has effect with the omission of paragraphs 6 to 7A (elimination of double counting etc).”.

### *Finance Act 2002*

#### *Introductory*

14 The Finance Act 2002 (c. 23) is amended as follows.

#### *Derivative contracts*

15 (1) Schedule 26 (derivative contracts) is amended as follows.

- (2) In Part 6 (special computational provisions) in paragraph 28 (transactions within groups) after sub-paragraph (3) insert—

“(3A) Where the debits or credits to be brought into account for the purposes of this Schedule in respect of any amounts fall to be determined in accordance with sub-paragraph (3), Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) does not apply in relation to those amounts.”.

(3) After paragraph 31 insert—

#### *“Amounts imputed under Schedule 28AA to the Taxes Act 1988*

31A(1) This paragraph applies where, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), an amount falls to be treated as any of the following—

- (a) an amount of profits or losses (disregarding any charges or expenses) arising to a company from any of its derivative contracts or related transactions;
- (b) charges or expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.

(2) That Schedule shall have effect, notwithstanding the provisions of any authorised accounting method, so as to require credits or debits relating to the amount so treated to be brought into account for the purposes of this Chapter to the same extent as they would be in the case of an actual amount of—

- (a) profits or losses (disregarding any charges or expenses) arising to the company from the derivative contract or related transaction, or



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- (b) charges or expenses incurred under or for the purposes of the derivative contract or related transaction,

as the case may be.”.

*Intangible fixed assets*

- 16 (1) Schedule 29 (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 55 (transfers within a group), after sub-paragraph (1) insert—
- “(1A) Where this paragraph applies in relation to the transfer of an asset, Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) does not apply in relation to the transfer.”.
- (3) In paragraph 92 (transfer between company and related party treated as being at market value) in sub-paragraph (3) (cases where consideration for transfer falls within Schedule 28AA without falling to be adjusted)—
- (a) at the end of paragraph (a) insert “, but”,
- (b) at the end of paragraph (b) omit “, and”,
- (c) omit paragraph (c) (which refers to paragraph 5(2) of Schedule 28AA to the Taxes Act 1988).

SCHEDULE 6

Section 41

EXPENSES OF COMPANIES WITH INVESTMENT BUSINESS AND INSURANCE COMPANIES

*Income and Corporation Taxes Act 1988*

*Levies and repayments under Financial Services and Markets Act 2000: investment companies*

- 1 (1) Section 76B of the Taxes Act 1988 is amended as follows.
- (2) In subsection (1) (certain sums paid by an investment company to be treated as expenses of management) for “an investment company” substitute “a company with investment business”.
- (3) In subsection (2) (repayment to investment company to be charged under Case VI of Schedule D)—
- (a) at the beginning, insert “ For the purposes of corporation tax, ”, and
- (b) for “an investment company” substitute “ a company with investment business ”.

*Incidental costs of obtaining loan finance*

- 2 (1) Section 77 of the Taxes Act 1988 is amended as follows.
- (2) In subsection (1) (which does not apply for the purposes of corporation tax but which includes provision for the costs in question to be treated as expenses of management) omit the words from “and the incidental costs” to the end of the subsection.

*Change in ownership of investment company: deductions generally.*

- 3 (1) Section 768B of the Taxes Act 1988 is amended as follows.
- (2) In subsection (1) (case where section applies) for “an investment company” substitute “ a company with investment business ”.

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- (3) In subsection (6) (treatment of expenses of management disbursed in the accounting period)—
- (a) for “are disbursed or treated as disbursed as expenses of management in the accounting period” substitute “ are, or are treated as, expenses of management referable to the accounting period ”;
  - (b) in the words following paragraph (b), for “as disbursed in that part” substitute “ expenses of management referable to that part ”.
- (4) In subsection (8) (treatment of capital allowances apportioned to either part of the accounting period) for “75(4)” substitute “ 75(7) ”.
- (5) In subsection (9) (which prevents certain sums being deducted under section 75 of the Taxes Act 1988) in paragraph (a) for “sums disbursed” substitute “ expenses of management deductible ”.
- (6) In subsection (14) (meaning of “investment company”) for “ “investment company” ” substitute “ “company with investment business” ”.
- (7) The sidenote to the section accordingly becomes “Change in ownership of company with investment business: deductions generally”.

*Deductions: assets transferred within group*

- 4 (1) Section 768C of the Taxes Act 1988 is amended as follows.
- (2) In subsection (1) (case where section applies) in paragraph (a) for “an investment company” substitute “ a company with investment business ”.
  - (3) In subsection (7) (no deduction under section 75 from an amount of total profits equal to the amount of the relevant gain) in paragraph (a) for “sums disbursed” substitute “ expenses of management deductible ”.
  - (4) In subsection (12), for the definition of “investment company” substitute—
 

““company with investment business” has the same meaning as in Part 4.”.

*Change in ownership of company carrying on property business*

- 5 (1) Section 768D of the Taxes Act 1988 is amended as follows.
- (2) In subsection (1) (case where section applies)—
    - (a) in paragraph (a) (investment company) for “an investment company” substitute “ a company with investment business ”, and
    - (b) in paragraph (b) (company other than investment company) for “an investment company” substitute “ a company with investment business ”.
  - (3) In subsection (4) (apportionment of profits and losses to two periods)—
    - (a) in paragraph (a) (investment company) for “an investment company” substitute “ a company with investment business ”, and
    - (b) in paragraph (b) (company other than investment company) for “an investment company” substitute “ a company with investment business ”.
  - (4) In subsection (6) (restriction of profits from which certain losses may be deducted) for “an investment company”, wherever occurring, substitute “ a company with investment business ”.
  - (5) In subsection (8) (definitions) for paragraph (b) (investment company) substitute—

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“(b) “company with investment business” has the same meaning as in Part 4.”.

*Change in ownership of company with unused non-trading loss on intangible fixed assets*

- 6 (1) Section 768E of the Taxes Act 1988 is amended as follows.
- (2) In subsection (1) (change in ownership of investment company) for “an investment company” substitute “ a company with investment business ”.
- (3) In subsection (7) (definition of “investment company”) for “ “investment company”” substitute “ “company with investment business” ”.

*Finance Act 1989*

*Charge of certain receipts of basic life assurance business*

- 7 (1) Section 85 of the Finance Act 1989 (c. 26) is amended as follows.
- (2) In subsection (2) (receipts excluded from subsection (1) omit paragraphs (c) to (d).
- (3) After subsection (2) insert—
- “(2A) Receipts falling within subsection (1) above are to be taken into account for the purposes of corporation tax when they are brought into account.
- Subsection (6) of section 89 (meaning of “brought into account”) shall also apply for the purposes of this section.
- (2B) Expenses fall to be deducted from receipts falling within subsection (1) above in accordance with the provisions of the Corporation Tax Acts applicable to Case VI of Schedule D.
- (2C) For the purposes of subsection (1) above, a receipt is referable to basic life assurance and general annuity business if—
- (a) in the case of a repayment or refund of acquisition expenses, the acquisition expenses fell within section 86 below,
- (b) in the case of a reinsurance commission, the policy or contract reinsured under the arrangement in respect of which the commission is paid constitutes basic life assurance and general annuity business, and
- (c) in any other case, it is income which, if it were income from an asset, would by virtue of section 432A of the Taxes Act 1988 (apportionment of insurance companies' income) be referable to basic life assurance and general annuity business.”.

*Spreading of relief for acquisition expenses*

- 8 (1) Section 86 of the Finance Act 1989 (c. 26) is amended as follows.
- (2) For subsections (1) to (1B) (meaning of “acquisition expenses”) substitute—
- “(1) For the purposes of this section, the acquisition expenses for any period of an insurance company carrying on life assurance business are such of the following as for that period fall to be included at Step 1 in section 76(7) of the Taxes Act 1988 (expenses of insurance companies)—
- (a) commissions (however described), other than commissions for persons who collect premiums from house to house,

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- (b) any other expenses payable solely for the purpose of the acquisition of business,
- (c) so much of any other expenses payable partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,

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

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

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

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

- (3) In subsection (2) (which relates to commissions for persons who collect premiums from house to house) for “expenses of management” substitute “ expenses payable ”.

- (4) Omit—

- (a) subsection (5) (expenses of management attributable to basic life assurance and general annuity business), and
- (b) subsection (5A) (exclusion of additional expenses of management under section 256(2)(a) of the Capital Allowances Act).

- (5) For subsection (6) (only one-seventh of acquisition expenses to be treated as deductible under sections 75 and 76 of the Taxes Act 1988) substitute—

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

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

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

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

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

- (6) Omit subsection (7) (which relates to accounting periods falling wholly or partly within the years 1990 to 1993).

- (7) For subsections (8) and (9) (deduction of further one-sevenths of full amount for succeeding accounting periods) substitute—

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

In any such case—

- (a) a further fraction of the adjusted amount of those expenses is to be relieved under that section for each succeeding accounting period after the base period, until the whole of the adjusted amount has been relieved,
- (b) the fraction is one-seventh, except that for any accounting period of less than a year the fraction is to be proportionately reduced, and
- (c) the relief is given by including that fraction of the adjusted amount at paragraph (b) of Step 8,

but this is subject to subsection (9) below.

(9) For any accounting period for which—

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

only that balance shall be so relieved.”

(8) After subsection (9) insert—

“(9A) In this section “expenses payable” has the same meaning as in Step 1.

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

#### *Finance Act 1996*

#### *Loan relationships: special provisions for insurers: treatment of deficit*

- 9 (1) In Schedule 11 to the Finance Act 1996 (c. 8) paragraph 4 is amended as follows.
- (2) In sub-paragraph (2), in the words following paragraph (b) (which require a reduction under that sub-paragraph to be made before any deduction by virtue of section 76 of the Taxes Act 1988 for expenses of management) for “any deduction by virtue of section 76 of the Taxes Act 1988 of any expenses of management” substitute “ any expenses deduction under section 76 of the Taxes Act 1988 ”.
  - (3) In sub-paragraph (3) (claim to carry back whole or part of excess of deficit over net income and gains) in the opening words, omit “net”.
  - (4) In sub-paragraph (4) (deficit, so far as not set off, to be carried forward and included in expenses of management for following period) for “an amount to be included in the company’s expenses of management for the period following the deficit period” substitute “ expenses payable which are referable to the period following the deficit period and are to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988 ”.

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- (5) In sub-paragraph (11) (meaning of references in sub-paragraph (10) to deductions by virtue of section 76 of the Taxes Act 1988) for “the deductions by way of management expenses” substitute “ the expenses deduction ”.
- (6) In sub-paragraph (12) (treatment of section 76(5) amount attributable to a claim under sub-paragraph (3) etc)—
- (a) for “section 76(5) amount”, in both places, substitute “ section 76(13) amount ”;
  - (b) for “section 75(3)” substitute “ section 76(13) ”.
- (7) In sub-paragraph (13) (treatment of section 76(5) amount to which the sub-paragraph applies) for “section 76(5) amount” substitute “ section 76(13) amount ”.
- (8) In sub-paragraph (14) (the section 76(5) amount attributable to a claim under sub-paragraph (3))—
- (a) in the opening words, for “section 76(5) amount” substitute “ section 76(13) amount ”; and
  - (b) in paragraphs (a) and (b) for “section 75(3)” substitute “ section 76(13) ”.
- (9) The amendment made by sub-paragraph (4) also has effect where the deficit period is the last accounting period of the company to begin before 1st April 2004.

## SCHEDULE 7

Section 47

### INSURANCE COMPANIES ETC

#### *Transfers of business*

- 1 In section 444A(3ZA) of the Taxes Act 1988 (losses), for “343(2), (4),” substitute “ 343(4), ”.
- 2 (1) Section 444AB of the Taxes Act 1988 (charge on transferor retaining assets) is amended as follows.
- (2) In subsection (5) (which defines, as “the previously untaxed amount”, the amount which, or a fraction of which, is chargeable to tax), for paragraph (a) substitute—
- “(a) if there are no retained liabilities, the fair value of the retained assets or, if there are, so much of the fair value of the retained assets as exceeds the amount of the retained liabilities, and”.
- (3) After subsection (6) insert—
- “(6A) In subsection (5) above—
    - (a) “the retained assets” means such of the assets held by the transferor immediately after the transfer as were assets of its long-term insurance fund immediately before the transfer; and
    - (b) “the retained liabilities” means such of the liabilities of the transferor immediately after the transfer as were included in column 1 of line 14, 17, 22, 31 or 38 of Form 14 in the periodical return of the transferor covering the period of account ending immediately before the transfer.”.

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(4) Sub-paragraphs (1) to (3) have effect in relation to insurance business transfer schemes (within the meaning of section 444AB of the Taxes Act 1988) taking place on or after 17th March 2004.

3 (1) In the Taxes Act 1988, after section 444AB insert—

**“444ABA Subsequent charge in certain cases within s.444AB**

- (1) This section applies where—
- (a) section 444AB applies in relation to a transfer in the case of which there are retained liabilities, and
  - (b) in any accounting period of the transferor beginning after the day of the transfer there is a reduction in the amount of the retained liabilities occasioned otherwise than by the making of a payment in or towards their discharge.
- (2) The transferor shall be charged to tax under Case VI of Schedule D in respect of the taxable amount as if it had been received by the transferor in the accounting period in which the reduction occurs.
- (3) If the transferor was charged to tax on the profits of its life assurance business under Case I of Schedule D for the accounting period ending with the day of the transfer, the taxable amount is the whole amount of the reduction.
- (4) Otherwise the taxable amount is the non-BLAGAB fraction of the amount of the reduction.
- (5) The non-BLAGAB fraction of the amount of the reduction is the fraction of which—
- (a) the numerator is the amount of the liabilities transferred, apart from those which are liabilities of basic life assurance and general annuity business, and
  - (b) the denominator is the amount of the liabilities transferred.
- (6) Where in any accounting period of the transferor beginning after the transfer there is an increase in the amount of the retained liabilities, this section applies in relation to subsequent accounting periods of the transferor as if the amount of the retained liabilities were reduced by the amount of the increase.
- (7) Where an amount is shown as post-transfer reduction liabilities in the transferor’s accounts for any accounting period beginning after the transfer, this section applies as if the amount of the retained liabilities at the end of that accounting period (and the beginning of the next) were increased by the amount so shown.
- (8) In subsection (7) above “post-transfer reduction liabilities” means liabilities of the transferor to make payments to relevant persons which, in accordance with the terms of the insurance business transfer scheme, have arisen in consequence of a reduction in the amount of the retained liabilities at any time after the transfer.
- (9) In subsection (8) above “relevant persons” means—

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- (a) if the transferor’s life assurance business immediately before the transfer was mutual business, persons who were policy holders or annuitants, or members of the transferor, at that time, and
  - (b) in any other case, persons who were policy holders or annuitants at that time.”.
- (2) Sub-paragraph (1) has effect where section 444AB of the Taxes Act 1988 applies by reason of an insurance business transfer scheme (within the meaning of that section) taking place on or after 17th March 2004.
- 4 (1) In section 444AD of the Taxes Act 1988 (modification of section 83(2B) of the Finance Act 1989 (c. 26)), in subsection (4) (amount to which section 83(2B) is not to apply to be difference between value of assets of long-term insurance fund of transferee and element of line 15 figure representing transferor’s long-term insurance fund), for paragraph (a) substitute—
  - “(a) the fair value of such of the assets of the long-term insurance fund of the transferee immediately after the transfer as were assets of the transferor’s long-term insurance fund immediately before the transfer, is greater than”.
- (2) Sub-paragraph (1) has effect in relation to insurance business transfer schemes taking place on or after 17th March 2004.
- 5 (1) In section 82(1) of the Finance Act 1989 (c. 26) (provisions applying for purposes of computations of profits in accordance with provisions applicable to Case I of Schedule D), for “and 82B” substitute “ to 82C ”.
- (2) In that Act, after section 82B insert—

**“82C Relevant financial reinsurance contracts**

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



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- (c) the liabilities reinsured under the relevant financial reinsurance contract are some or all of the liabilities to policy holders and annuitants transferred,
  - (d) the reduction of the company's liabilities resulting from the reinsurance of those liabilities under the relevant financial reinsurance contract occurs during the period of account in which the transfer takes place, and
  - (e) the whole amount of the liabilities to policy holders and annuitants transferred is not taken into account as opening liabilities in calculating the profits of the company for that period of account.
- (5) For the purposes of subsection (4)(b) above there is a deficiency of assets on the transfer if—
- (a) the aggregate amount of the liabilities to policy holders and annuitants, and of any debts, which are transferred, exceeds
  - (b) the value of the assets transferred and brought into account in the long-term insurance fund of the company.
- (6) The reinsurance offset amount for each period of account of the company beginning before the termination of the relevant financial reinsurance contract is to be taken into account as a receipt of the period of account.
- (7) The reinsurance offset amount for a period of account is the amount of any decrease in the period of account in the difference between the full liabilities and the reduced liabilities where—
- (a) “the full liabilities” is the amount which would be brought into account for the period as liabilities but for the relevant financial reinsurance contract, and
  - (b) “the reduced liabilities” is the amount of the liabilities actually so brought into account.
- (8) But, in a case in which condition B is met, the total amount taken into account by virtue of subsection (6) above must not exceed the amount by which—
- (a) the aggregate amount mentioned in paragraph (a) of subsection (5) above, exceeds
  - (b) the value referred to in paragraph (b) of that subsection.
- (9) For the purposes of this section “insurance business transfer scheme” includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).”
- (3) Sub-paragraphs (1) and (2) have effect in relation to periods of account ending on or after 17th March 2004 (whether the insurance business transfer scheme takes place, or the relevant financial reinsurance contract is entered into, before or on or after that date).

#### *Chargeable gains*

- 6 (1) In section 210A(10) of the Taxation of Chargeable Gains Act 1992 (c. 12) (ring-fencing of losses: policy holders' share of chargeable gains or losses), in paragraph (b) (case where policy holders' share of relevant profits does not exceed BLAGAB

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profits), for “of the company for the accounting period bears to those relevant profits” substitute “ for the accounting period bears to those BLAGAB profits ”.

- (2) Sub-paragraph (1) has effect in relation to accounting periods beginning on or after 17th March 2004.

#### *Double taxation*

- 7 In section 804B of the Taxes Act 1988 (double taxation relief: insurance companies carrying on more than one category of business), after subsection (7) insert—

“(7A) The Treasury may by regulations amend subsection (7) above; and the regulations may include amendments having effect in relation to accounting periods during which they are made.”.

#### *Meaning of “referable”*

- 8 (1) Section 432A of the Taxes Act 1988 (apportionment of income and gains) is amended as follows.

- (2) In subsection (1), for “where in any period an insurance company carries on more than one category of business and it is necessary for the purposes of the Corporation Tax Acts to determine in relation to the period” substitute “ for determining for the purposes of any provision of the Corporation Tax Acts in relation to any period for which an insurance company carries on business ”.

- (3) After that subsection insert—

“(1A) If the company carries on only one category of business in the period, all of the income and gains or losses referred to in subsection (1) above shall be referable to that category of business; but if the company carries on more than one category of business in the period, the following provisions shall apply.”.

- (4) In subsection (2), for “subsection (1)” substitute “ subsections (1) and (1A) ”.

- 9 (1) In the following provisions of the Taxes Act 1988—

- (a) section 438(1) (pension business), and  
(b) section 439B(6) (life reinsurance business),

after “referable” insert “ (in accordance with section 432A) ”.

- (2) In the following provisions of the Finance Act 1989 (c. 26) (which relate to the policy holders' share of profits)—

- (a) section 88(3A)(a),  
(b) the words within quotation marks in the portion of section 88(3B) preceding paragraph (a),  
(c) the portion of section 89(1B) preceding paragraph (a), and  
(d) section 89(2)(b),

after “referable” insert “ (in accordance with section 432A of the Taxes Act 1988) ”; and, in consequence of the amendment made by paragraph (b), in section 88(3B), for “referable to that business” substitute “ so referable ”.

- (3) In the following provisions of the Taxation of Chargeable Gains Act 1992 (c. 12)—

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- (a) the definitions of “BLAGAB allowable losses” and “BLAGAB chargeable gains” in section 210A(13) (ring-fencing of losses),
- (b) section 211ZA(10) (transfers of business: transfer of unused losses), and
- (c) section 213(1A)(a) (spreading of gains and losses under section 212), after “referable” insert “ (in accordance with section 432A of the Taxes Act) ”.

## SCHEDULE 8

Section 48

### LOAN RELATIONSHIPS: MISCELLANEOUS AMENDMENTS

#### *Introductory*

- 1 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

*Late interest: close companies where limited partnership is collective investment scheme etc*

- 2 (1) Paragraph 2 (late interest) is amended as follows.
  - (2) In sub-paragraph (1B) (case where debtor is close company and creditor is participator etc)—
    - (a) in the opening words, after “close company” insert “ , but not a CIS-based close company, ”and
    - (b) in the closing words, for the words from “a limited partnership” to the end of the sub-paragraph substitute “ a CIS limited partnership ”.
  - (3) In sub-paragraph (6) (definitions) insert the following definitions at the appropriate place—

““CIS-based close company” means a company that would not be a close company apart from the attribution, under section 416(6) of the Taxes Act 1988 by virtue of section 417(3)(a) of that Act, of the rights and powers of one or more partners in a CIS limited partnership to another of the partners;”;

““CIS limited partnership” means a limited partnership—

    - (a) which is a collective investment scheme, or
    - (b) which would be a collective investment scheme if it were not a body corporate;”;

““collective investment scheme” means a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000;”.
    - (4) The amendments made by this paragraph have effect for accounting periods ending on or after 10th December 2003.

*Bad debts etc: release of amount where creditor is subject to insolvency proceedings*

- 3 (1) Paragraph 5 (bad debts etc) is amended as follows.
  - (2) In sub-paragraph (3) (cases where no credit is required to be brought into account by the debtor on the release of a debt) for the words following paragraph (b) substitute

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— “no credit in respect of the release shall be required to be brought into account in the case of that company if any of the four conditions set out below is satisfied.”.

(3) After sub-paragraph (3) insert—

“(4) Condition 1 is that the release is part of a relevant arrangement or compromise, within the meaning given by section 74(2) of the Taxes Act 1988.

(5) Condition 2 is that the debtor relationship is one as respects which section 87 of this Act (accounting method where parties have a connection) requires the use of an authorised accruals basis of accounting.

(6) Condition 3 is that—

- (a) in the case of the company releasing the amount, the circumstances are as described in any of paragraphs (a) to (d) of paragraph 6A(1) below (insolvent liquidation etc),
- (b) immediately before the time at which those circumstances arose in the case of that company, the relationship was one as respects which section 87 of this Act requires the use of an authorised accruals basis of accounting, and
- (c) immediately after that time, the relationship was not one as respects which section 87 of this Act requires the use of an authorised accruals basis of accounting.

In the application of paragraphs (a) to (d) of paragraph 6A(1) below for the purposes of paragraph (a) above, references in those paragraphs to the company which has the creditor relationship are to be taken as references to the company releasing the amount.

(7) Condition 4 is that—

- (a) the relationship is not one as respects which section 87 of this Act requires the use of an authorised accruals basis of accounting, and
- (b) in the case of the company which has the debtor relationship, the circumstances are as described in any of paragraphs (a) to (d) of paragraph 6A(1) below.

In the application of paragraphs (a) to (d) of paragraph 6A(1) below for the purposes of paragraph (b) above, references in those paragraphs to the company which has the creditor relationship are to be taken as references to the company which has the debtor relationship.”.

(4) The amendments made by this paragraph have effect in relation to any release made on or after 10th December 2003.

*Bad debt etc: parties having connection and creditor in insolvent administrative receivership*

4 (1) Paragraph 6A (bad debt etc: parties having connection and creditor in insolvent liquidation etc) is amended as follows.

(2) The amendments made to the paragraph by paragraph 29 of the Schedule to the Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096) shall be deemed never to have been made.

(3) In sub-paragraph (1) (cases where paragraph 6A applies) after paragraph (b) insert—

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“(bb) the company is in insolvent administrative receivership;”.

(4) In sub-paragraph (2) (cases where departure from assumption of full payment allowed) after paragraph (b) insert—

“(bb) in a case falling within paragraph (bb) of that sub-paragraph, at a time when the appointment of the administrative receiver is in force;”.

(5) In sub-paragraph (2)(d) (which refers to a time corresponding to that described in paragraph (a), (b) or (c)) after “(b)” insert “, (bb) ”.

(6) After sub-paragraph (4) (company in insolvent administration) insert—

“(5) For the purposes of this paragraph a company is in insolvent administrative receivership if—

- (a) there is in force in relation to that company an appointment of an administrative receiver, within the meaning of Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, and
- (b) the company was put into administrative receivership at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of administrative receivership.”.

(7) The amendments made by sub-paragraphs (3) to (6) have effect in relation to accounting periods ending on or after 10th December 2003.

*Deemed assignment of assets and liabilities on company ceasing to be resident in UK etc*

5 (1) After paragraph 10 (imported losses etc) insert—

*“Deemed assignment of assets and liabilities  
on company ceasing to be resident in UK etc*

10A(1) This paragraph applies if at any time (“the relevant time”)—

- (a) a company ceases to be resident in the United Kingdom, or
- (b) in the case of a company that is not resident in the United Kingdom, an asset or liability representing a loan relationship of the company ceases to be held for the purposes of a permanent establishment of the company in the United Kingdom in any circumstances not involving a related transaction.

(2) In a case falling within sub-paragraph (1)(a) above, this Chapter shall have effect as if the company had—

- (a) immediately before the relevant time, assigned the assets and liabilities that represent its loan relationships for a consideration of an amount equal to their fair value at that time, and
- (b) immediately reacquired them for a consideration of the same amount.

(3) Sub-paragraph (2) above does not apply in relation to an asset or a liability to the extent that, immediately after the relevant time, it is held or owed for the purposes of a permanent establishment of the company in the United Kingdom.

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- (4) In a case falling within sub-paragraph (1)(b) above, this Chapter shall have effect as if the company had—
- (a) immediately before the relevant time, assigned the asset or liability, so far as ceasing to be held or owed for the purposes of the permanent establishment, for a consideration of an amount equal to its fair value at that time, and
  - (b) immediately reacquired it for a consideration of the same amount.
- (5) In this paragraph “fair value” shall be construed in accordance with section 85 of this Act.”.
- (2) The amendment made by this paragraph has effect where the cessation in question occurs on or after 17th March 2004.

*Discounted securities of close companies: limited partnership collective investment scheme etc*

- 6 (1) Paragraph 18 (discounted securities of close companies) is amended as follows.
- (2) In sub-paragraph (1) (application of paragraph) after paragraph (a) insert—
- “(aa) the issuing company is not a CIS-based close company, as defined in paragraph 2(6) above;”.
- (3) In paragraph (c) of that sub-paragraph (debt not owed to limited partnership which is a collective investment scheme) for the words from “a limited partnership” to the end of the sub-paragraph substitute “ a CIS limited partnership, as defined in paragraph 2(6) above ”.
- (4) Omit sub-paragraph (3A) (meaning of connection between companies, an expression no longer used in the paragraph).
- (5) The amendments made by this paragraph have effect for accounting periods ending on or after 10th December 2003.

*Interpretation of references to major interest*

- 7 (1) Paragraph 20 (major interest) is amended as follows.
- (2) In sub-paragraph (1) (cases where one company has a major interest in another) omit paragraph (c) (both controllers etc to satisfy the same condition in sub-paragraph (2)).
- (3) Omit sub-paragraph (2) (both controllers etc are creditors, or both are debtors, of the controlled company).
- (4) The amendments made by this paragraph have effect for accounting periods beginning on or after 17th March 2004.

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## SCHEDULE 9

Section 49

### DERIVATIVE CONTRACTS: MISCELLANEOUS AMENDMENTS

#### *Introductory*

1 Schedule 26 to the Finance Act 2002 (c. 23) is amended as follows.

#### *Power to amend provisions of Schedule 26*

2 (1) Paragraph 13 is amended as follows.

(2) For sub-paragraph (1) (power to amend paragraphs 2 to 12) substitute—

“(1) The Treasury may by order amend—

- (a) any of paragraphs 2 to 12, or
- (b) Part 9 of this Schedule.”.

(3) For sub-paragraph (4) (power to make certain orders so as to have effect in relation to accounting periods ending on or after day on which order comes into force (whenever beginning)) substitute—

“(4) An order under this paragraph may provide for any of its provisions to have effect in relation to accounting periods ending on or after the day on which the order comes into force (whenever beginning).”.

(4) In consequence of the amendment made by sub-paragraph (2), the heading to the paragraph accordingly becomes “Power to amend paragraphs 2 to 12 and Part 9”.

#### *Deemed assignment of derivative contracts on company ceasing to be resident in UK etc*

3 (1) At the beginning of Part 6 (special computational provisions) insert—

#### *“Deemed assignment of derivative contracts on company ceasing to be resident in UK etc*

22A (1) This paragraph applies if at any time (“the relevant time”)—

- (a) a company ceases to be resident in the United Kingdom, or
- (b) in the case of a company not resident in the United Kingdom, the rights and liabilities of the company under a derivative contract to any extent cease to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in circumstances not involving a related transaction.

(2) In a case falling within sub-paragraph (1)(a), this Schedule shall have effect as if the company had—

- (a) immediately before the relevant time, assigned its rights and liabilities under its derivative contracts for a consideration of an amount equal to their fair value at that time, and
- (b) immediately reacquired them for a consideration of the same amount.

(3) Sub-paragraph (2) does not apply in relation to a derivative contract to the extent that, immediately after the relevant time, the company’s rights and

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liabilities under the contract are held or owed for the purposes of a permanent establishment of the company in the United Kingdom.

- (4) In a case falling within sub-paragraph (1)(b), this Schedule shall have effect as if the company had—
- (a) immediately before the relevant time, assigned the rights and liabilities, so far as ceasing to be held or owed for the purposes of the permanent establishment, for a consideration of an amount equal to their fair value at that time, and
  - (b) immediately reacquired them for a consideration of the same amount.
- (5) In this paragraph “fair value” shall be construed in accordance with paragraph 17.”.
- (2) The amendment made by this paragraph has effect where the cessation in question occurs on or after 17th March 2004.

*Derivative contracts for unallowable purposes*

- 4 (1) In paragraph 23, in sub-paragraph (7) (definition of amount of accumulated credits against which accumulated net losses may be brought into account) in paragraph (b) after “an amount equal to” insert “—
- (i) so much of any debits arising, in the case of the derivative contract, for that accounting period or any earlier accounting period as is not, in accordance with sub-paragraph (3), referable to the unallowable purpose, and
  - (ii) ”.
- (2) The amendment made by this paragraph has effect in relation to accounting periods ending on or after 17th March 2004.

*Open-ended investment companies: capital profits and losses*

- 5 (1) In paragraph 33(4)(b) (which refers to a subsequent statement of recommended practice issued by Financial Services Authority) omit “issued by the Financial Services Authority”.
- (2) This amendment has effect in relation to accounting periods beginning on or after 1st February 2004.



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## SCHEDULE 10

Section 52

### AMENDMENT OF ENACTMENTS THAT OPERATE BY REFERENCE TO ACCOUNTING PRACTICE

#### PART 1

##### LOAN RELATIONSHIPS

###### *Main computational provisions*

- 1 (1) Section 84 of the Finance Act 1996 (c. 8) (debts and credits to be brought into account) is amended as follows.
- (2) In subsection (1) omit “in accordance with an authorised accounting method and”.
- (3) Omit subsections (2) and (4A).
- (4) For subsection (7) substitute—
- “(7) Schedule 9 to this Act contains further provisions as to the debits and credits to be brought into account for the purposes of this Chapter.”
- 2 (1) Section 84A of that Act (exchange gains and losses from loan relationships) is amended as follows.
- (2) For subsection (3) substitute—
- “(3) Subsection (1) does not apply to an exchange gain or loss of a company to the extent that it arises—
- (a) in relation to an asset or liability representing a loan relationship of the company, or
- (b) as a result of the translation from one currency to another of the profit or loss of part of the company’s business,
- and is recognised in the company’s statement of recognised gains and losses or statement of changes in equity.
- (3A) Subsection (1) does not apply to 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.”
- (3) Omit subsections (4) to (7).
- (4) In subsection (8) after “(3)” insert “ or (3A) ”.
- (5) In subsection (10) at the end add “ and power to make provision subject to an election or to other prescribed conditions ”.
- 3 For sections 85 and 86 of that Act (authorised accounting methods and their application) substitute—

#### **“85A Computation in accordance with generally accepted accounting practice**

- (1) Subject to the provisions of this Chapter, the amounts to be brought into account by a company for any period for the purposes of this Chapter are

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those that, in accordance with generally accepted accounting practice, are recognised in determining the company's profit or loss for the period.

- (2) If a company does not draw up accounts in accordance with generally accepted accounting practice ("correct accounts")—
  - (a) the provisions of this Chapter apply as if correct accounts had been drawn up, and
  - (b) the amounts referred to in this Chapter as being recognised for accounting purposes are those that would have been recognised if correct accounts had been drawn up.
- (3) If a company draws up accounts that rely to any extent on amounts derived from an earlier period of account for which the company did not draw up correct accounts, the amounts referred to in this Chapter as being recognised for accounting purposes in the later period are those that would have been recognised if correct accounts had been drawn up for the earlier period.
- (4) The provisions of subsections (2) and (3) apply where the company does not draw up accounts at all as well as where it draws up accounts that are not correct.

### **85B Amounts recognised in determining company's profit or loss**

- (1) Any reference in this Chapter to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—
  - (a) in the company's profit and loss account,
  - (b) in the company's statement of recognised gains and losses or statement of changes in equity, or
  - (c) in any other statement of items brought into account in computing the company's profits and losses for that period.
- (2) Subsection (1) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (3) The Treasury may by regulations—
  - (a) make provision excluding from subsection (1) amounts of a prescribed description, and
  - (b) make provision for or in connection with bringing into account in prescribed circumstances amounts in relation to which subsection (1) does not have effect by virtue of regulations under paragraph (a) above.
- (4) The regulations may provide that subsection (1) does not apply to prescribed amounts in a period of account to the extent that they derive from or otherwise relate to amounts brought into account in a prescribed manner in a previous period of account.
- (5) The power to make regulations under this section includes—
  - (a) power to make different provision for different cases; and
  - (b) power to make provision subject to an election or to other prescribed conditions.

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- (6) The power to make regulations under this section does not apply to exchange gains or losses (but see section 84A(3A) and (8) to (10)).”.
- 4 In section 87 of that Act (accounting method where parties have a connection), for subsection (2) substitute—
- “(2) Where this section applies the debits and credits to be brought into account for the purposes of this Chapter as respects the loan relationship must be determined on an amortised cost basis of accounting.
- (2A) The provisions of subsections (2B) and (2C) apply where subsection (2) applies, or ceases to apply, with the result that there is a change of basis of accounting for a loan relationship as between one accounting period of a company and the next.
- (2B) Where for an accounting period (“the relevant period”) a company brings into account debits or credits determined in accordance with an amortised cost basis of accounting, having used a fair value basis of accounting for the immediately previous accounting period (“the previous period”)—
- (a) any amount by which the fair value of the relevant asset or liability at the end of the previous period (“A”) exceeds the cost of the asset or liability that would be given at that time on an amortised cost basis of accounting (“B”) shall be brought into account for the purposes of this Chapter as a debit (in the case of an asset) or credit (in the case of a liability) for the relevant period, and
- (b) any amount by which B exceeds A shall be brought into account for the purposes of this Chapter as a credit (in the case of an asset) or debit (in the case of a liability) for that period.
- (2C) Where for an accounting period (“the relevant period”) a company brings into account debits or credits determined on the basis of fair value accounting, having used an amortised cost basis of accounting for the immediately previous accounting period (“the previous period”)—
- (a) any amount by which the fair value of the relevant asset or liability immediately before the relevant period (“C”) exceeds the cost of the asset or liability that would be given at that time on an amortised cost basis of accounting (“D”) shall be brought into account for the purposes of this Chapter as a credit (in the case of an asset) or debit (in the case of a liability) for the relevant period, and
- (b) any amount by which D exceeds C shall be brought into account for the purposes of this Chapter as a debit (in the case of an asset) or credit (in the case of a liability) for that period.”.
- 5 In section 88 of that Act (exemption from section 87 in certain cases), omit subsection (2)(b) and subsection (3)(b).
- 6 (1) Section 88A of that Act (accounting method where rate of interest is reset) is amended as follows.
- (2) In subsection (4) for the words from “the only accounting method authorised” to the end substitute “ the debits and credits to be brought into account for the purposes of this Chapter as respects the loan relationship must be determined on the basis of fair value accounting ”.
- (3) Omit subsection (5).

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7 Omit section 90 of that Act (changes of accounting method).

8 After that section insert—

**“90A Change of accounting basis applicable to assets or liabilities**

(1) The Treasury may by regulations provide that where in accordance with generally accepted accounting practice assets or liabilities of a company that were previously dealt with for accounting purposes on an amortised cost basis of accounting are required to be dealt with for accounting purposes on the basis of fair value accounting, the debits or credits to be brought into account for the purposes of this Chapter shall continue be determined on an amortised cost basis of accounting.

(2) The power to make regulations under this section includes power—

- (a) to make different provision for different cases;
- (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient; and
- (c) to make provision subject to an election by or to other prescribed conditions.”.

9 (1) Omit section 92 of that Act (convertible securities etc.: creditor relationships).

(2) Where at the relevant time a company holds an asset to which section 92 applies—

- (a) section 92(7) (deemed disposal and re-acquisition) shall have effect as if the asset had ceased at that time to be an asset to which that section applied (but without ceasing to represent a creditor relationship of the company), and
- (b) any amount falling to be brought into account under the Taxation of Chargeable Gains Act 1992 (c. 12) shall be brought into account in accordance with section 92(4) accordingly.

(3) The relevant time for this purpose is immediately before the end of the last period of account before that in relation to which sub-paragraph (1) has effect (see section 52(3) of this Act).

10 Omit section 92A of that Act (convertible securities etc.: debtor relationships).

11 (1) Omit sections 93, 93A and 93B of that Act (relationships linked to the value of chargeable assets).

(2) Where at the relevant time a company holds an asset to which section 93 applies—

- (a) section 93B (deemed disposal and re-acquisition) shall have effect as if the asset had ceased at that time to be an asset to which section 93 applied (but without ceasing to represent a creditor relationship of the company), and
- (b) any amount falling to be brought into account under the Taxation of Chargeable Gains Act 1992 (c. 12) shall be brought into account in accordance with section 93(4) accordingly.

(3) The relevant time for this purpose is immediately before the end of the last period of account before that in relation to which sub-paragraph (1) has effect (see section 52(3) of this Act).

12 Omit section 94 of that Act (indexed gilt-edged securities).

13 After that section insert—

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#### “94A Loan relationships with embedded derivatives

- (1) This section applies where a company is permitted or required in accordance with generally accepted accounting practice to treat the rights and liabilities under a loan relationship to which it is party (whether as debtor or creditor) as divided between—
  - (a) rights and liabilities under a loan relationship (the “host contract”), and
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments (“embedded derivatives”).
- (2) The company shall be treated—
  - (a) for the purposes of this Chapter as party to a loan relationship whose rights and liabilities consist only of the rights and liabilities of the host contract, and
  - (b) for the purposes of Schedule 26 to the Finance Act 2002 (derivative contracts) as—
    - (i) party to a relevant contract within the meaning of that Schedule whose rights and liabilities consist only of those of the embedded derivative, or
    - (ii) if there is more than one embedded derivative, party to relevant contracts within the meaning of that Schedule each of whose rights and liabilities consist only of those of one of the embedded derivatives.
- (3) Each relevant contract to which the company is treated as party under subsection (2)(b) shall be treated for the purposes of that Schedule as an option, a future or a contract for differences according to whether the rights and liabilities of the embedded derivative would be of that character if contained in a separate contract.”.

14 In section 95 of that Act (gilt strips), in subsection (1) for the words from “has effect” to “accruals basis of accounting” substitute “applies”.

15 In section 96 of that Act (special rules for certain other gilts), omit subsection (3).

16 In section 101 of that Act (financial instruments), after subsection (1) insert—

“(1A) This section does not apply where section 94A above applies (treatment of embedded derivatives).”.

17 (1) Section 103 of that Act (interpretation) is amended as follows.

(2) In subsection (1)—

- (a) omit the definition of “authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting”;
- (b) at the appropriate places insert—

““amortised cost basis of accounting”, in relation to a loan relationship of a company, means a basis of accounting under which an asset or liability representing the loan relationship is shown in the company’s accounts at cost adjusted for cumulative amortisation and any impairment, repayment or release;”;

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““fair value”, in relation to a 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;”;

““fair value accounting” means a basis of accounting under which assets or liabilities are shown in the company’s balance sheet at their fair value;”;

““impairment” includes uncollectability;”;

““impairment loss” means a debit in respect of the impairment of a financial asset;”;

- (c) omit the definition of “statutory accounts”.

- (3) Omit subsection (5).

*Special computational provisions*

18 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

19 In paragraph 3 (1) (options etc.) for “an authorised accruals basis of accounting” substitute “ an amortised cost basis of accounting ”.

20 (1) Paragraph 5 (bad debts etc.) is amended as follows.

(2) For the heading substitute “ *Release of liability under debtor relationship* ”.

(3) Omit sub-paragraphs (1) to (2A).

(4) In sub-paragraph (3)(b) for “an authorised accruals basis of accounting” substitute “ an amortised cost basis of accounting ”.

(5) In sub-paragraphs (5), (6)(b) and (c) and (7)(a) for “requires the use of an authorised accruals basis of accounting” substitute “ applies ”.

21 (1) Paragraph 5A (bad debts and consortium relief) is amended as follows.

(2) In the heading for “*Bad debts*” substitute “ *Impairment losses* ”.

(3) In sub-paragraph (2) for “by virtue of paragraph 5 above a debit” substitute “ an impairment loss ”.

(4) In sub-paragraphs (5)(a) and (8)(b) for “debts brought into account for that period by virtue of paragraph 5 above” substitute “ impairment losses brought into account for that period ”.

(5) In sub-paragraph (9) omit “by virtue of paragraph 5(2) above”.

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- (6) In sub-paragraph (14), in the closing words, for “sub-paragraph (12)” substitute “sub-paragraph (6) ”.
- (7) For sub-paragraph (15)(a) substitute—  
“(a) the debtor consortium company has, in accordance with an amortised cost basis of accounting, brought into account for an accounting period an amount in respect of a release of any liability under a debtor relationship, and”.
- (8) In the closing words of sub-paragraph (15) omit “under paragraph 5(1)”.
- (9) In sub-paragraph (19), in the definition of “related debt recovery credit” for “by virtue of paragraph 5(2) above in connection with a bad debt” substitute “ in connection with a debt ”.
- 22 (1) Paragraph 6 (bad debts etc where parties have a connection) is amended as follows.
- (2) In the heading for “*Bad debt etc*” substitute “ *Impairment losses* ”.
- (3) In sub-paragraph (1) for “requires an authorised accruals basis of accounting to be used” substitute “ (accounting method where parties have a connection) applies ”.
- (4) In sub-paragraph (2) omit “in accordance with that accounting method”.
- (5) For sub-paragraph (3) substitute—  
“(3) An impairment loss may be brought into account for the purposes of this Chapter only in accordance with—  
(a) sub-paragraph (4) below,  
(b) paragraph 6A, or  
(c) paragraph 6B.”.
- (6) After that sub-paragraph insert—  
“(3A) Where an impairment loss is excluded by sub-paragraph (3), no credit in respect of any reversal of the impairment shall be brought into account for the purposes of this Chapter.”.
- (7) In sub-paragraph (4) for “A departure from that assumption shall be allowed” substitute “ An impairment loss is not excluded by sub-paragraph (3) ”.
- 23 (1) Paragraph 6A (bad debts etc.: parties having connection and creditor in insolvent liquidation etc.) is amended as follows.
- (2) In the heading for “*Bad debt etc*” substitute “ *Impairment losses* ”.
- (3) In sub-paragraph (2) for the words from “a departure” to “shall be allowed” substitute “ an impairment loss is not excluded by paragraph 6(3) ”.
- 24 (1) Paragraph 6B (bad debts etc.: companies becoming connected) is amended as follows.
- (2) In the heading for “*Bad debt etc*” substitute “ *Impairment losses* ”.
- (3) In sub-paragraph (1) for the words following paragraph (b) substitute “ an impairment loss is not excluded by paragraph 6(3) in the following two cases ”.
- (4) In sub-paragraph (2)—

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- (a) for the opening words down to “if—” substitute “ The first case is where—”;
  - (b) in paragraph (a) for “a departure has been allowed under paragraph 5 (1) above” substitute “ an impairment loss has been brought into account for the purposes of this Chapter ”.
- (5) In sub-paragraph (3) for “A departure shall be allowed” substitute “ An impairment loss may be brought into account ”.
- (6) For sub-paragraph (5) substitute—
- “(5) The second case is where the following conditions are met.”.
- (7) In sub-paragraph (7) for “A departure shall be allowed” substitute “ An impairment loss may be brought into account ”.
- 25 (1) Paragraph 6C (bad debts etc.: cessation of connection) is amended as follows.
- (2) In the heading for “*Bad debt etc.: departure not permitted by paragraph 6.*” substitute “ *Impairment losses:* ”.
- (3) For sub-paragraph (1)(a) substitute—
- “(a) an impairment loss is excluded by paragraph 6(3) in any accounting period, and”.
- (4) In sub-paragraph (2) omit “by virtue of paragraph 5(2) above”.
- 26 In paragraph 8 (restriction on writing off overseas sovereign debts etc.), for sub-paragraphs (1) and (2) substitute—
- “(1) This paragraph applies as respects the debits and credits to be brought into account for the purposes of this Chapter in respect of the impairment of a financial asset representing a relevant overseas debt.
- This paragraph does not apply where fair value accounting is used.
- (2) Where this paragraph applies the debits and credits to be so brought into account for any accounting period shall be determined on the basis that it is not permissible for the asset to be impaired by more than the relevant percentage.”.
- 27 (1) Paragraph 9 (further restriction on bringing into account losses on overseas sovereign debt etc.) is amended as follows.
- (2) In sub-paragraph (1) for paragraphs (a) and (b) substitute—
- “(a) an impairment loss falls to be brought into account for the purposes of this Chapter in respect of a relevant overseas debt in relation to which any of the conditions in sub-paragraph (2) is met,
- (b) in the accounting period in which that loss falls to be so brought into account (“the loss period”) the company ceases to be a party to the loan relationship.”.
- (3) In sub-paragraph (2)—
- (a) for the opening words down to “if—” substitute “ The conditions referred to in sub-paragraph (1)(a) are— ”;
- (b) in paragraph (b)—
- (i) after “Chapter” insert “ for a period of account of the company beginning before 1st January 2005 ”, and



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- (ii) for “paragraph 5(1)(a) to (c) above” substitute “ paragraph 5(1)(a) to (c) of this Schedule as it had effect before its amendment by Schedule 10 to the Finance Act 2004 ”;
  - (c) omit the “or” at the end of paragraph (b);
  - (d) after that paragraph insert—
    - “(ba) an impairment loss in respect of the debt has been brought into account for the purposes of this Chapter for a period of account of the company beginning on or after 1st January 2005; or”.
- 28 In paragraph 10 (imported losses etc.), for sub-paragraph (1) substitute—

“(1) This paragraph applies in the case of a company (“the chargeable company”) for an accounting period (“the loss period”) where—

  - (a) there is a loss arising in connection with a loan relationship of the company which apart from this paragraph would fall to be brought into account for the purposes of this Chapter, and
  - (b) that loss is referable in whole or in part to a time when the relationship was not subject to United Kingdom taxation.

This paragraph does not apply where fair value accounting is used.”.
- 29 In paragraph 10A (deemed disposal on company ceasing to be resident in UK etc.), omit sub-paragraph (5).
- 30 In paragraph 11 (transactions not at arm’s length), for sub-paragraph (1) substitute—

“(1) Where—

  - (a) debits or credits in respect of a loan relationship of a company fall to be brought into account for the purposes of this Chapter in respect of a related transaction, and
  - (b) that transaction is not a transaction at arm’s length,

the debits or credits to be brought into account shall be determined on the assumption that the transaction was entered into on the terms on which it would have been entered into between independent persons.

This is subject to the exceptions in sub-paragraphs (1A), (2), (3) and (3A).”.
- 31 In paragraph 12 (continuity of treatment: groups etc.), in sub-paragraph (2A)—
  - (a) in the opening words for “an authorised mark to market basis of accounting” substitute “ fair value accounting ”;
  - (b) at the end of paragraph (a) insert “ ; and ”; and
  - (c) omit paragraph (b) and the word “and” preceding it.
- 32 In paragraph 13 (loan relationships for unallowable purposes), in the closing words of sub-paragraph (1) omit “given by the authorised accounting method used”.
- 33 (1) Paragraph 14 (debts and credits treated as relating to capital expenditure) is amended as follows.
  - (2) In sub-paragraph (1) omit “given by an authorised accounting method”.
  - (3) After sub-paragraph (3) add—

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- “(4) Where a debit is brought into account by a company in accordance with sub-paragraph (1), no debit shall be brought into account in respect of—
- (a) the writing down of so much of the value of the fixed capital asset or project as is attributable to that debit, or
  - (b) so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.”.

34 In paragraph 16 (amounts imputed under Schedule 28AA to the Taxes Act 1988), in sub-paragraph (2) omit “, notwithstanding the provisions of any authorised accounting method,”.

35 (1) Paragraph 19 (partnerships involving companies) is amended as follows.

    - (2) Omit sub-paragraph (10).
    - (3) For sub-paragraph (11) substitute—

“(11) Where the company partner uses fair value accounting in relation to its interest in the partnership, the debits and credits to be brought into account under this paragraph by that company must be determined on the basis of fair value accounting.”.

(4) In sub-paragraph (12) for the words from “carried to or sustained by a reserve” to the end substitute “ recognised in the firm’s statement of recognised gains and losses or statement of changes in equity ”.

36 After paragraph 19 insert—

*“Adjustment on change of accounting policy*

- 19A(1) This paragraph applies where—
- (a) there is a change of accounting policy in drawing up a company’s accounts from one period of account (the “earlier period”) to the next (the “later period”), and
  - (b) the approach in each of those periods accorded with the law and practice applicable in relation to that period.
- (2) This paragraph applies, in particular, where—
- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
  - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.
- (3) If there is a difference between—
- (a) the accounting value of an asset or liability representing a loan relationship of the company at the end of the earlier period, and
  - (b) the accounting value of that asset or liability at the beginning of the later period,
- a corresponding debit or credit (as the case may be) shall be brought into account for the purposes of this Chapter in the later period.

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- (4) In sub-paragraph (3) “accounting value” means the carrying value of the asset or liability recognised for accounting purposes.
- (5) This paragraph does not apply if or to the extent that such a debit or credit as is mentioned in sub-paragraph (3) falls to be brought into account apart from this paragraph.
- (6) Where or to the extent that an adjustment is made under this paragraph, no adjustment under Schedule 22 (computation of profits: adjustment on change of basis) shall be made.

*Power to make further provision by regulations*

- 19B (1) The Treasury may by regulations make provision for cases where there is a change of accounting policy in drawing up a company’s accounts from one period of account to the next affecting the amounts to be brought into account for accounting purposes in respect of the company’s loan relationships.
- (2) The regulations may provide for any debits or credits that would otherwise be brought into account for the purposes of this Chapter—
    - (a) not to be brought into account,
    - (b) to be brought into account only to a prescribed extent, or
    - (c) to be brought into account over a prescribed period or in prescribed circumstances.
  - (3) Regulations under this paragraph may, in particular, modify the operation of paragraph 19A.
  - (4) The power to make regulations under this paragraph includes power—
    - (a) to make different provision for different cases, and
    - (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient.”.

*Collective investment schemes etc.*

- 37 Schedule 10 to the Finance Act 1996 (c. 8) (loan relationships: collective investment schemes) is amended as follows.
- 38 For paragraph 1A (investment trusts and venture capital trusts: capital reserves) substitute—

*“Investment trusts: capital profits, gains or losses*

- 1A (1) Capital profits, gains or losses arising to an investment trust from a creditor relationship must not be brought into account as credits or debits for the purposes of this Chapter.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
    - (a) in the case of an investment trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and

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- (b) in the case of an investment trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a creditor relationship in an accounting period are profits, gains or losses that are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice.
- (4) For the purposes of this paragraph the Statement of Recommended Practice is, for an accounting period for which it is required or permitted to be used—
  - (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.

*Venture capital trusts: capital profits, gains or losses*

- 1B (1) Capital profits, gains or losses arising to a venture capital trust from a creditor relationship must not be brought into account as credits or debits for the purposes of this Chapter.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
    - (a) in the case of a venture capital trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and
    - (b) in the case of a venture capital trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
  - (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a creditor relationship in an accounting period are profits, gains or losses that—
    - (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice as if the venture capital trust were an investment trust, or
    - (b) would be so carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using the Statement of Recommended Practice.
  - (4) For the purposes of this paragraph the Statement of Recommended Practice is, in relation to an accounting period for which it is required or permitted to be used—
    - (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
    - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.”.

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- 39 (1) Paragraph 2A (authorised unit trusts) is amended as follows.
- (2) In the heading at the end add “ : *capital profits, gains or losses* ”.
- (3) In sub-paragraph (1) omit “, notwithstanding section 84(2)(b) of this Act”.
- (4) After that sub-paragraph insert—
- “(1A) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of an authorised unit trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of an authorised unit trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.”.
- (5) In sub-paragraph (2) for the words “For the purposes of this paragraph” substitute “ In the cases mentioned in sub-paragraph (1A)(a) ”.
- (6) In sub-paragraph (5) after “the definition of capital profits, gains or losses” insert “ in sub-paragraphs (2) to (4) ”.
- 40 (1) Paragraph 2B (open-ended investment companies) is amended as follows.
- (2) In the heading at the end add “ : *capital profits, gains or losses* ”.
- (3) In sub-paragraph (1) omit “, notwithstanding section 84(2)(b) of this Act”.
- (4) After that sub-paragraph insert—
- “(1A) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of a company that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of a company that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.”.
- (5) In sub-paragraph (2) for the words “For the purposes of this paragraph” substitute “ In the cases mentioned in sub-paragraph (1A)(a) ”.
- (6) In sub-paragraph (5) after “the definition of capital profits, gains or losses” insert “ in sub-paragraphs (2) to (4) ”.
- 41 (1) Paragraph 4 (company holdings in unit trusts and offshore funds) is amended as follows.
- (2) For sub-paragraph (3) substitute—
- “(3) The debits and credits to be brought into account for the purposes of this Chapter as respects the company’s relevant holdings must be determined on the basis of fair value accounting.”.
- (3) In sub-paragraph (4) for the words from the beginning to “for the purposes of this Chapter,” substitute “ Sub-paragraph (3) shall not be taken, as respects any accounting period, ”.

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- 42 In Schedule 11 to the Finance Act 1996 (c. 8) (loan relationships: special provision for insurers), in paragraph 1(1A) for “sections 92(1)(f), 93(1)(a) and (b) and 96(1)(b)” substitute “section 96(1)(b).”

*Consequential amendments*

- 43 In section 440 of the Taxes Act 1988 (insurance companies: transfers of assets etc.), in subsection (2A) (treatment of asset representing loan relationship), for the words from “any authorised accounting method” to “shall be applied” substitute “ Chapter 2 of Part 4 of the Finance Act 1996 applies ”.
- 44 In section 730A of that Act (treatment of price differential on sale and repurchase of securities), in subsection (6) (treatment of loan relationships)—
- (a) omit paragraph (b) (but not the word “and” following it), and
  - (b) in the closing words for “paragraphs (b) and (c)” substitute “ paragraph (c) ”.
- 45 In Schedule 28A of that Act (change in ownership of investment company), in paragraphs 7(1)(d)(ii) and (e)(ii), 11(1)(a) and (3)(c) and 16(1)(d)(ii) and (e)(ii) for “authorised accruals” substitute “ amortised cost ”.
- 46 In paragraph 7(3) of Schedule 26 to the Transport Act 2000 (c. 38) (transfers under that Act), for “an authorised accounting method” substitute “ a basis of accounting ”.

**PART 2**

DERIVATIVE CONTRACTS

*Method of taxation*

- 47 (1) In Schedule 26 to the Finance Act 2002 (c. 23) (derivative contracts: method of taxation), paragraph 15 (credits and debits to be brought into account) is amended as follows.
- (2) In sub-paragraph (1) omit “in accordance with an authorised accounting method and”.
  - (3) Omit sub-paragraphs (2), (3) and (6).
  - (4) In sub-paragraph (9) for “paragraph 16” substitute “ the following provisions of this Schedule ”.
- 48 (1) Paragraph 16 of that Schedule (exchange gains and losses arising from derivative contracts) is amended as follows.
- (2) For sub-paragraph (3) substitute—
    - “(3) Sub-paragraph (1) does not apply to an exchange gain or loss of a company to the extent that it—
    - (a) arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, or
    - (b) results from the translation from one currency to another of the profit or loss of part of the company’s business,

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and is recognised in the company’s statement of recognised gains and losses or statement of changes in equity.

(3A) Sub-paragraph (1) above does not apply to so much of an exchange gain or loss arising to a company, in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, as falls within a description prescribed for the purpose in regulations made by the Treasury.”.

(3) Omit sub-paragraphs (4) to (7).

(4) In sub-paragraph (8) after “(3)” insert “ or (3A) ”.

(5) In sub-paragraph (10) at the end add “ and power to make provision subject to an election or to other prescribed conditions ”.

#### *Accounting methods*

49 In the heading to Part 4 of that Schedule for “ACCOUNTING METHODS” substitute “ COMPUTATION OF AMOUNTS TO BE BROUGHT INTO ACCOUNT ”.

50 For paragraphs 17 to 20 of that Schedule (authorised accounting methods and their application) substitute—

#### *“Computation in accordance with generally accepted accounting practice*

17A (1) Subject to the provisions of this Schedule, the amounts to be brought into account by a company for any period for the purposes of this Schedule are those that, in accordance with generally accepted accounting practice, are recognised in determining the company’s profit or loss for the period.

(2) If a company does not draw up accounts in accordance with generally accepted accounting practice (“correct accounts”)—

(a) the provisions of this Schedule apply as if correct accounts had been drawn up, and

(b) the amounts referred to in this Schedule as being recognised for accounting purposes are those that would have been recognised if correct accounts had been drawn up.

(3) If a company draws up accounts that rely to any extent on amounts derived from an earlier period of account for which the company did not draw up correct accounts, the amounts referred to in this Schedule as being recognised for accounting purposes in the later period are those that would have been recognised if correct accounts had been drawn up for the earlier period.

(4) The provisions of sub-paragraphs (2) and (3) apply where the company does not draw up accounts at all as well as where it draws up accounts that are not correct.

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*Amounts recognised in determining company's profit or loss*

- 17B (1) Any reference in this Schedule to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—
- (a) in the company's profit and loss account,
  - (b) in the company's statement of recognised gains and losses or statement of changes in equity, or
  - (c) in any other statement of items brought into account in computing the company's profits and losses for that period.
- (2) Sub-paragraph (1) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.

*Power to make further provision by regulations*

- 17C (1) The Treasury may by regulations make provision—
- (a) excluding amounts of a prescribed description from paragraph 17B(1);
  - (b) requiring amounts of a prescribed description that do not fall within paragraph 17B (1) (by virtue of regulations under paragraph (a) above or otherwise) to be brought into account in determining a company's profit or loss for a period in prescribed circumstances;
  - (c) as to the manner in which any such amounts are to be brought into account.
- (2) The regulations may (in particular) make provision by reference to the fact that amounts derive from or otherwise relate to amounts brought into account in a prescribed manner in a previous period of account.
- (3) The power to make regulations under this paragraph includes—
- (a) power to make different provision for different cases; and
  - (b) power to make provision subject to an election or to other prescribed conditions.
- (4) Regulations under this paragraph may apply, exclude or modify any of the provisions of this Schedule in relation to cases for which provision is made by the regulations.”

51 In paragraph 21 (basis of accounting for contracts falling within paragraph 6, 7 or 8), for sub-paragraph (2) substitute—

“(2) Where this paragraph applies the debits and credits to be brought into account for the purposes of this Schedule as respects the derivative contract must be determined on the basis of fair value accounting.”.

*Special provision for bad debt etc.*

52 In the heading to Part 5 of that Schedule (special provision for bad debt etc.) for “BAD DEBT ETC” substitute “RELEASE OF LIABILITY”.

53 (1) Paragraph 22 of that Schedule (bad debts etc.) is amended as follows.



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- (2) For the heading substitute “ *Release of liability under derivative contract* ”.
- (3) Omit sub-paragraphs (1) to (4).
- (4) In sub-paragraph (5), omit paragraph (b) and the word “and” preceding it.

#### *Special computational provisions*

- 54 In paragraph 22A of that Schedule (deemed assignment of derivative contracts on company ceasing to be resident in UK etc.), omit sub-paragraph (5).
- 55 In paragraph 23 of that Schedule (derivative contracts for unallowable purposes), in sub-paragraphs (2) and (3) omit “given by the authorised accounting method used”.
- 56 (1) Paragraph 25 of that Schedule (debits and credits treated as relating to capital expenditure) is amended as follows.
  - (2) In sub-paragraph (1) omit “given by an authorised accounting method”.
  - (3) After sub-paragraph (3) add—
    - “(4) Where a debit is brought into account by a company in accordance with sub-paragraph (1), no debit shall be brought into account in respect of—
      - (a) the writing down of so much of the value of the fixed capital asset or project as is attributable to that debit, or
      - (b) so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.”.
- 57 In paragraph 30 of that Schedule (transactions within groups: authorised mark to market basis of accounting)—
  - (a) in the heading for “*authorised mark to market basis of accounting*” substitute “*fair value accounting*”;
  - (b) in sub-paragraph (1) for “an authorised mark to market basis of accounting” substitute “*fair value accounting*”.
- 58 In paragraph 31A of that Schedule (amounts imputed under Schedule 28AA to the Taxes Act 1988), in sub-paragraph (2) omit “, notwithstanding the provisions of any authorised accounting method.”.

#### *Collective investment schemes*

- 59 (1) Paragraph 32 of that Schedule (authorised unit trusts: capital profits, gains or losses) is amended as follows.
  - (2) In sub-paragraph (1) omit “, notwithstanding paragraph 15”.
  - (3) After that sub-paragraph insert—
    - “(1A) For the purposes of this paragraph “capital profits, gains or losses”—
      - (a) in the case of an authorised unit trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
      - (b) in the case of an authorised unit trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.”.

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- (4) In sub-paragraph (2) for the words “For the purposes of this paragraph” substitute “  
 In the cases mentioned in sub-paragraph (1A)(a) ”.
- 60 (1) Paragraph 33 of that Schedule (open-ended investment companies: capital profits, gains or losses) is amended as follows.
- (2) In sub-paragraph (1) omit “, notwithstanding paragraph 15”.
- (3) After that sub-paragraph insert—
- “(1A) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of an open-ended investment company that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of an open-ended investment company that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.”.
- (4) In sub-paragraph (2) for the words “For the purposes of this paragraph” substitute “  
 In the cases mentioned in sub-paragraph (1A)(a) ”.
- 61 In paragraph 34 of that Schedule (power to amend paragraphs 32 and 33), in sub-paragraph (1) after “the definition of capital profits, gains or losses” insert “ in paragraph 32(2) to (4) or 33(2) to (4) ”.
- 62 In paragraph 36 of that Schedule (contracts relating to holdings in unit trusts, open-ended investment companies and offshore funds) for sub-paragraph (2) substitute—
- “(2) The Corporation Tax Acts have effect for that period (and any succeeding period in which the relevant contract is a relevant contract of the company) as if the relevant contract were a derivative contract.
- (2A) The debits and credits to be brought into account for the purposes of this Schedule as respects the company’s relevant holdings must be determined on the basis of fair value accounting.”.
- 63 For paragraph 38 of that Schedule (investment trusts and venture capital trusts: capital reserves) substitute—
- “Investment trusts: capital profits, gains or losses*
- 38 (1) Capital profits, gains or losses arising to an investment trust from a creditor relationship must not be brought into account as credits or debits for the purposes of this Schedule.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of an investment trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and
- (b) in the case of an investment trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a creditor relationship in an accounting period are

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profits, gains or losses that are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice.

- (4) For the purposes of this paragraph the Statement of Recommended Practice is, for an accounting period for which it is required or permitted to be used—
- (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.

*Venture capital trusts: capital profits, gains or losses*

- 38A (1) Capital profits, gains or losses arising to a venture capital trust from a creditor relationship must not be brought into account as credits or debits for the purposes of this Schedule.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of a venture capital trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and
  - (b) in the case of a venture capital trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a creditor relationship in an accounting period are profits, gains or losses that—
- (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice as if the venture capital trust were an investment trust, or
  - (b) would be so carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using the Statement of Recommended Practice.
- (4) For the purposes of this paragraph the Statement of Recommended Practice is, in relation to an accounting period for which it is required or permitted to be used—
- (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.”.

*Miscellaneous*

- 64 In paragraph 48 of that Schedule (election to treat contract as two assets), for sub-paragraph (4) substitute—

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“(4) The debits and credits to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as respects a creditor relationship arising under sub-paragraph (2)(a) must be determined on the basis of fair value accounting.”.

65 In paragraph 49(4) of that Schedule (partnerships involving companies: provisions for determining credits and debits for company partner), for paragraph (c) substitute—

“(c) to the extent that any exchange gains or losses arising from the contract are recognised in the firm’s statement of recognised gains and losses or statement of changes in equity, the exchange gains or losses shall to that extent be treated as if they had been recognised in the corresponding statement of the company partner.”.

66 For paragraph 50 of that Schedule (partnerships involving companies: application of accounting methods) substitute—

*“Partnerships involving companies: use of fair value accounting*

50 (1) Where the company partner uses fair value accounting in relation to its interest in the firm, the debits and credits to be brought into account under paragraph 49 by that company must be determined on the basis of fair value accounting.

(2) In this paragraph “company partner” and “firm” have the same meaning as in paragraph 49.”.

67 After that paragraph insert—

*“Adjustment on company changing to international accounting standards*

50A(1) This paragraph applies where a company—

- (a) prepares accounts for one period (“the earlier period”) in accordance with UK generally accepted accounting practice, and
- (b) prepares accounts for the next period (“the later period”) in accordance with international accounting standards,

and the approach in each of those periods accords with the law and practice applicable in relation to that period.

(2) If there is a difference between—

- (a) the accounting value of a derivative contract of the company at the end of the earlier period, and
- (b) the accounting value of that contract at the beginning of the later period,

a corresponding debit or credit (as the case may be) shall be brought into account for the purposes of this Schedule in the later period.

(3) In sub-paragraph (2) “accounting value” means the carrying value of the contract recognised for accounting purposes.

(4) Where or to the extent that an adjustment is made under this paragraph, no adjustment under Schedule 22 (computation of profits: adjustment on change of basis) shall be made.”.

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### *Interpretation*

- 68 Omit paragraph 52 of that Schedule (meaning of “statutory accounts”).
- 69 In paragraph 54 (1) of that Schedule (interpretation)—
- (a) omit the definition of “authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting”;
  - (b) for the definition of “fair value” substitute—

“fair value”, in relation to a derivative contract 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 contract 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 contract in respect of amounts which at that time are not yet due and payable;

“fair value accounting” means a basis of accounting under which assets and liabilities are shown in the company’s balance sheet at their fair value;”;
  - (c) omit the definition of “statutory accounts”.

### *Consequential amendment*

- 70 In section 440 of the Taxes Act 1988 (insurance companies: transfers of assets etc.), in subsection (2B) (treatment of derivative contract), for the words from “any authorised accounting method” to “shall be applied” substitute “ Schedule 26 to the Finance Act 2002 applies ”.

## **PART 3**

### **INTANGIBLE FIXED ASSETS**

*Excluded assets: assets in respect of which capital allowances previously made*

- 71 In Part 10 of Schedule 29 to the Finance Act 2002 (c. 23) (excluded assets), after paragraph 73 (rights over tangible assets) insert—

*“Assets entirely excluded: assets in respect of which capital allowance previously made*

- 73A (1) This Schedule does not apply to an intangible asset of a company in the following circumstances.
- (2) The circumstances are that—
- (a) the asset falls to be treated as an intangible asset in accounts of the company,

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- (b) in a previous period of account the asset fell to be treated as a tangible asset in accounts of the company, and
- (c) an allowance under Part 2 of the Capital Allowances Act (plant and machinery allowances) was made to the company in respect of the asset on the latter basis.”.

*Adjustment on change of accounting policy*

72 In Part 13 of that Schedule (supplementary provisions), after paragraph 116 insert—

*“Adjustment on change of accounting policy*

116A (1) This paragraph applies where—

- (a) there is a change of accounting policy in drawing up a company’s accounts from one period of account (the “earlier period”) to the next (the “later period”), and
- (b) the approach in each of those periods accorded with the law and practice applicable in relation to that period.

(2) This paragraph applies, in particular, where—

- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
- (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.

(3) If there is a difference between—

- (a) the accounting value of an intangible fixed asset of the company at the end of the earlier period, and
- (b) the accounting value of that asset at the beginning of the later period,

a corresponding debit or credit (as the case may be) shall be brought into account for tax purposes in the later period.

(4) The amount of the debit or credit to be brought into account for tax purposes is:

$$\text{Accounting Difference} \times \frac{\text{Tax Value}}{\text{Accounting Value}}$$

where—

Accounting Difference is the amount of the difference specified in subparagraph (3);

Tax Value is the tax written down value of the asset at the end of the earlier period; and

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Accounting Value is the accounting value of the asset at the end of the earlier period.

- (5) This paragraph does not apply in relation to an intangible fixed asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed-rate).
- (6) This paragraph does not apply to a difference between the accounting value of an intangible fixed asset in different periods of account to the extent that, in respect of that difference, a credit or debit is brought into account for tax purposes under—
- (a) paragraph 12 (reversal of accounting gain),
  - (b) paragraph 15 (gain on revaluation), or
  - (c) paragraph 17 (reversal of accounting loss).
- (7) Where or to the extent that an adjustment is made under this paragraph, no adjustment under Schedule 22 (computation of profits: adjustment on change of basis) shall be made.”.

#### *References to amounts recognised in profit and loss account*

- 73 (1) In Part 15 of that Schedule (interpretation) paragraph 134(a) (references to amounts recognised in profit and loss account) is amended as follows.
- (2) After “statement of total recognised gains and losses” insert “, statement of changes in equity ”.
- (3) After paragraph (b) insert— “ other than an amount recognised for accounting purposes by way of correction of a fundamental error. ”.

#### *Consequential amendments*

- 74 In paragraph 15(4) of that Schedule (credits on revaluation of intangible fixed assets)—
- (a) in the definition of “Previous Debits”, after “accounting basis)” insert “ or paragraph 116A (adjustment on change of accounting policy) ”;
  - (b) in the definition of “Previous Credits”, at the end insert “ or paragraph 116A (adjustment on change of accounting policy) ”.
- 75 In paragraph 20 (1) of that Schedule (realisation of asset written down for tax purposes), after paragraph (b) insert “, or
- (c) under paragraph 116A (adjustment on change of accounting policy).”
- 76 In paragraph 27 (1) of that Schedule (calculation of tax written down value of asset written down on accounting basis)—
- (a) in the definition of “Debits”, after “paragraph 9” insert “ or paragraph 116A (adjustment on change of accounting policy) ”;
  - (b) in the definition of “Credits”, at the end insert “ or paragraph 116A (adjustment on change of accounting policy) ”.

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## PART 4

### FOREIGN CURRENCY ACCOUNTING

#### *Main provisions*

77 For sections 92 to 94AB of the Finance Act 1993 (c. 34) (corporation tax: currency) substitute—

#### *“Corporation tax: currency*

*The basic rule: sterling to be used*

#### **92 The basic rule: sterling to be used**

- (1) For the purposes of corporation tax the profits of a company for an accounting period must be computed and expressed in sterling.
- (2) The following sections contain further provision as to the application of subsection (1) to certain profits or losses falling to be computed in accordance with generally accepted accounting practice—
  - section 92A (company operating in sterling and preparing accounts in another currency);
  - section 92B (company operating in currency other than sterling and preparing accounts in another currency);
  - section 92C (company preparing accounts in currency other than sterling).

*Company operating in sterling and preparing accounts in another currency*

#### **92A Company operating in sterling and preparing accounts in another currency**

- (1) This section applies if, for a period of account, in accordance with generally accepted accounting practice, a company resident in the United Kingdom—
  - (a) prepares its accounts in a currency other than sterling, and
  - (b) in those accounts identifies sterling as its functional currency.
- (2) Profits or losses of the company for the period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes must be computed in sterling as if the company prepared its accounts in sterling.

*Company operating in currency other than sterling and preparing accounts in another currency*

#### **92B Company operating in currency other than sterling and preparing accounts in another currency**

- (1) This section applies if, for a period of account, in accordance with generally accepted accounting practice—
  - (a) a company resident in the United Kingdom prepares its accounts in one currency,
  - (b) in those accounts it identifies another currency as its functional currency, and



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- (c) that currency is not sterling.
  - (2) Profits or losses of the company for the period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes must be computed in sterling by—
    - (a) computing those profits or losses in the functional currency as if the company prepared its accounts in that currency, and
    - (b) taking the sterling equivalent of those profits or losses.
  - (3) Where this section applies, it shall be assumed that any sterling amount mentioned in the Corporation Tax Acts is its equivalent expressed in the functional currency of the company.
- Company preparing accounts in currency other than sterling*

### **92C Company preparing accounts in currency other than sterling**

- (1) This section applies in relation to a company resident in the United Kingdom if, for a period of account—
  - (a) the company prepares its accounts in a currency other than sterling (the “accounts currency”), and
  - (b) neither section 92A nor section 92B applies.
- (2) This section also applies in relation to a company that is not resident in the United Kingdom if, for a period of account, the company prepares its return of accounts in a currency other than sterling (the “accounts currency”).
- (3) Profits or losses of the company for the period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes must be computed in sterling by—
  - (a) computing those profits or losses in the accounts currency, and
  - (b) taking the sterling equivalent of those profits or losses.
- (4) Where this section applies, it shall be assumed that any sterling amount mentioned in the Corporation Tax Acts is its equivalent expressed in the accounts currency of the company.

*Translating amounts into equivalent in different currency*

### **92D Translating amounts into equivalent in different currency**

- (1) Where, for the purposes of computing the profits or losses of a company for an accounting period, an amount is required by section 92B or 92C to be translated—
    - (a) into its sterling equivalent, or
    - (b) into its equivalent expressed in the functional currency or the accounts currency of the company,the translation must be made by reference to the appropriate exchange rate.
  - (2) The “appropriate exchange rate” is—
    - (a) the average exchange rate for the current accounting period, or
    - (b) an appropriate spot rate of exchange for the transaction in question.
- Meaning of “accounts”, “return of accounts” and “functional currency”*

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## 92E Meaning of “accounts”, “return of accounts” and “functional currency”

- (1) References in sections 92A to 92C to the “accounts” of a company resident in the United Kingdom are to—
  - (a) the annual accounts of the company required by Part 7 of the Companies Act 1985 or Part 8 of the Companies (Northern Ireland) Order 1986; or
  - (b) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of the country or territory under whose laws the company is incorporated; or
  - (c) if the company is not so required to keep accounts, such of its accounts as most closely correspond to accounts which it would have been required to prepare if the provisions of Part 7 of the Companies Act 1985 applied to it.
- (2) The reference in section 92C to the “return of accounts” of a company not resident in the United Kingdom is to a return of such accounts of its permanent establishment in the United Kingdom as may be required by the Inland Revenue under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax returns).
- (3) References in sections 92A, 92B and 92D to a company’s “functional currency” are to the currency of the primary economic environment in which the company operates.”.

### *Consequential amendments*

- 78 (1) Section 730BB of the Taxes Act 1988 (exchange gains and losses on sale and repurchase of securities) is amended as follows.
- (2) In subsection (2)(c) for the words from “section 93 of the Finance Act 1993” to “sterling)” substitute “ section 92B or 92C of the Finance Act 1993 (company preparing accounts or operating in currency other than sterling) ”.
- (3) In subsection (3)—
  - (a) in paragraph (a) for “section 93 of the Finance Act 1993” substitute “ section 92B or 92C of the Finance Act 1993 (company preparing accounts or operating in currency other than sterling) ”;
  - (b) in paragraph (b) for the words from “relevant foreign currency” to “the company” substitute “ relevant currency ”;
  - (c) in paragraph (c)(i) and (ii) for “relevant foreign currency” substitute “ relevant currency ”.
- (4) After subsection (3) insert—
 

“(3A) In subsection (3), references to the relevant currency are—

  - (a) in cases in which section 92B of the Finance Act 1993 applies, to the functional currency (within the meaning of that section), and
  - (b) in cases in which section 92C of the Finance Act 1993 applies, to the accounts currency (within the meaning of that section).”
- (5) Omit subsection (12).

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## SCHEDULE 11

Section 64

### CONDITIONS FOR REGISTRATION FOR GROSS PAYMENT

#### PART 1

##### CONDITIONS TO BE SATISFIED BY INDIVIDUALS

###### *General*

- 1 (1) In the case of an application for an individual to be registered for gross payment, the following conditions must be satisfied by the individual.
- (2) But where the application is for the registration of the individual as a partner in a firm, this Part of this Schedule has effect with the omission of paragraphs 2 and 3.

###### *The business test*

- 2 The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that he is carrying on a business in the United Kingdom which—
- (a) consists of or includes the carrying out of construction operations or the furnishing or arranging for the furnishing of labour in carrying out construction operations, and
  - (b) is, to a substantial extent, carried on by means of an account with a bank.

###### *The turnover test*

- 3 (1) The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of the business mentioned in paragraph 2 is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than the amount specified in regulations made by the Board as the minimum turnover for the purposes of this sub-paragraph.
- (2) In sub-paragraph (1) “relevant payments” means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—
- (a) are of a description specified in subsection (2) of section 74; but
  - (b) are not of a description specified in subsection (3) of that section,
- other than so much of the payments as represents the direct cost to the person receiving the payments of materials used or to be used in carrying out the operations in question.
- (3) The Board may make regulations for the purpose of enabling a person who does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

###### *The compliance test*

- 4 (1) The applicant must, subject to sub-paragraphs (3) and (4), have complied with—

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- (a) all obligations imposed on him in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c. 9), and
  - (b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, any business of his.
- (2) An applicant who at any time in the qualifying period had control of a company is to be taken not to satisfy the condition in sub-paragraph (1) unless the company has satisfied that condition in relation to the period or periods within the qualifying period during which he had control of it; and for this purpose “control” is to be construed in accordance with section 416(2) to (6) of the Taxes Act 1988.
- (3) An applicant or company that has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
  - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue, is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (4) An applicant or company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the applicant or company had a reasonable excuse for the failure to comply, and
  - (b) if the excuse ceased, he or it complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (5) Where the applicant states, for the purpose of showing that he has complied with all obligations imposed on him as mentioned in sub-paragraph (1), that he was not subject to any of one or more obligations in respect of any period within the qualifying period—
- (a) he must satisfy the Board of Inland Revenue of that fact by such evidence as may be prescribed in regulations made by the Board; and
  - (b) if for that purpose he states that he has been outside the United Kingdom for the whole or any part of the qualifying period, he must also satisfy them, by such evidence as may be so prescribed, that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in sub-paragraph (1).
- (6) The applicant must, if any contribution has at any time during the qualifying period become due from him under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),
- have paid the contribution when it became due.
- (7) There must be reason to expect that the applicant will, in respect of periods after the qualifying period, comply with—
- (a) such obligations as are referred to in sub-paragraphs (1) to (6), and
  - (b) such requests as are referred to in sub-paragraph (1).

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- (8) Subject to sub-paragraphs (3) and (4), a person is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (5) if there has been a contravention of a requirement as to—
- (a) the time at which, or
  - (b) the period within which,
- the obligation or request was to be complied with.

## PART 2

### CONDITIONS TO BE SATISFIED BY FIRMS

#### *General*

- 5 In the case of an application for an individual or a company to be registered for gross payment as a partner in a firm, the following conditions must be satisfied by the firm.

#### *The business test*

- 6 The applicant must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the firm's business—
- (a) is carried on in the United Kingdom, and
  - (b) satisfies the conditions mentioned in paragraph 2(a) and (b).

#### *The turnover test*

- 7 (1) The partners must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of the firm's business is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than whichever is the smaller of—
- (a) the multiple turnover threshold; and
  - (b) the amount specified for the purposes of this paragraph in regulations made by the Board;
- and in this sub-paragraph “relevant payments” has the meaning given by paragraph 3(2).
- (2) In sub-paragraph (1) “the multiple turnover threshold” means the sum of—
- (a) the amount obtained by multiplying the number of partners in the firm who are individuals by the amount specified in regulations as the minimum turnover for the purposes of paragraph 3(1); and
  - (b) in respect of each partner in the firm which is a company (other than one to which paragraph 11(1)(b) would apply), the amount equal to what would have been the minimum turnover for the purposes of paragraph 11 (1) if the application had been for registration of that company for gross payment.
- (3) The Board may make regulations—

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- (a) for determining the number of partners in the firm to be taken into account for the purposes of sub-paragraph (2) (for example, where the number of partners has fluctuated over a period);
- (b) for the purpose of enabling a firm which does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

*The compliance test*

- 8 (1) Subject to sub-paragraphs (2) and (3), each of the persons who are partners at the time of the application must have complied, so far as any such charge to income tax or corporation tax is concerned as falls to be computed by reference to the profits or gains of the firm's business, with—
- (a) all obligations imposed on him in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c. 9); and
  - (b) all requests made in the qualifying period to him as such a partner to supply to the Inland Revenue accounts of, or other information about, the firm's business or his share of the profits or gains of that business.
- (2) Where a person has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
  - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue,
- the firm is, in such circumstances as may be prescribed by the regulations, to be treated, in relation to that partner, as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (3) Where a person has failed to comply with such an obligation or request as is referred to in sub-paragraph (1), the firm is to be treated, in relation to that partner, as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the person had a reasonable excuse for the failure to comply, and
  - (b) if the excuse ceased, he complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (4) There must be reason to expect that each of the persons who are from time to time partners in the firm will, in respect of periods after the qualifying period, comply with such obligations and requests as are referred to in sub-paragraph (1).
- (5) Subject to sub-paragraphs (2) and (3), a person is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraph (1) if there has been a contravention of a requirement as to—
- (a) the time at which, or
  - (b) the period within which,
- the obligation or request was to be complied with.

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### PART 3

#### CONDITIONS TO BE SATISFIED BY COMPANIES

##### *General*

- 9 In the case of an application for a company to be registered for gross payment (whether as a partner in a firm or otherwise), the following conditions must be satisfied by the company.

##### *The business test*

- 10 The company must satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that—
- (a) it is carrying on (whether or not in partnership) a business in the United Kingdom, and
  - (b) that business satisfies the conditions mentioned in paragraph 2(a) and (b).

##### *The turnover test*

- 11 (1) The company must either—
- (a) satisfy the Inland Revenue, by such evidence as may be prescribed in regulations made by the Board of Inland Revenue, that the carrying on of its business is likely to involve the receipt in the year following the making of the application of an aggregate amount by way of relevant payments which is not less than the amount which is the minimum turnover for the purposes of this sub-paragraph; or
  - (b) satisfy the Inland Revenue that the only persons with shares in the company are companies which are limited by shares and themselves are registered for gross payment;
- and in this sub-paragraph “relevant payments” has the meaning given by paragraph 3(2).
- (2) The minimum turnover for the purposes of sub-paragraph (1) is whichever is the smaller of—
- (a) the amount obtained by multiplying the amount specified in regulations as the minimum turnover for the purposes of paragraph 3 (1) by the number of persons who are relevant persons in relation to the company; and
  - (b) the amount specified for the purposes of this paragraph in regulations made by the Board of Inland Revenue.
- (3) For the purposes of sub-paragraph (2) a person is a relevant person in relation to the company—
- (a) where the company is a close company, if he is a director of the company (within the meaning given by section 67 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1)) or a beneficial owner of shares in the company; and
  - (b) in any other case, if he is such a director of the company.
- (4) The Board may make regulations—

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- (a) for determining the number of relevant persons to be taken into account for the purposes of sub-paragraph (2) (for example, where the number of such persons has fluctuated over a period);
- (b) for the purpose of enabling a company which does not satisfy the condition in sub-paragraph (1) to be treated as satisfying that condition in such circumstances as may be prescribed.

*The compliance test*

- 12 (1) The company must, subject to sub-paragraphs (2) and (3), have complied with—
- (a) all obligations imposed on it in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c. 9); and
  - (b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, its business.
- (2) A company that has failed to comply with such an obligation or request as—
- (a) is referred to in sub-paragraph (1), and
  - (b) is of a kind prescribed by regulations made by the Board of Inland Revenue,
- is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.
- (3) A company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—
- (a) the company had a reasonable excuse for the failure to comply, and
  - (b) if the excuse ceased, it complied with the obligation or request without unreasonable delay after the excuse had ceased.
- (4) The company must, if any contribution has at any time during the qualifying period become due from the company under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),
- have paid the contribution when it became due.
- (5) The company must have complied with any obligations imposed on it by the following provisions of the Companies Act 1985 (c. 6) in so far as those obligations fell to be complied with within the qualifying period—
- (a) sections 226, 241 and 242 (contents, laying and delivery of annual accounts);
  - (b) section 288(2) (return of directors and secretary and notification of changes therein);
  - (c) sections 363 to 365 (annual returns);
  - (d) section 691 (registration of constitutional documents and list of directors and secretary of overseas company);
  - (e) section 692 (notification of changes in constitution or directors or secretary of overseas company);
  - (f) section 693 (overseas company to state its name and country of incorporation);
  - (g) section 699 (obligations of companies incorporated in Channel Islands or Isle of Man);



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- (h) Chapter 2 of Part 23 (accounts of oversea company).
- (6) The company must have complied with any obligations imposed on it by the following provisions of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) in so far as those obligations fell to be complied with within the qualifying period—
- (a) Articles 234, 249 and 250 (contents, laying and delivery of annual accounts);
  - (b) Article 296(2) (return of directors and secretary and notification of changes therein);
  - (c) Articles 371 to 373 (annual returns);
  - (d) Article 641 (registration of constitutional documents and list of directors and secretary of Part XXIII company);
  - (e) Article 642 (notification of changes in constitution or directors or secretary of Part XXIII company);
  - (f) Article 643 (Part XXIII company to state its name and country of incorporation);
  - (g) Article 649 (accounts of Part XXIII company).
- (7) There must be reason to expect that the company will, in respect of periods after the qualifying period, comply with—
- (a) all such obligations as are referred to in paragraphs 10 and 11 and sub-paragraphs (1) to (6), and
  - (b) such requests as are referred to in sub-paragraph (1).
- (8) Subject to sub-paragraphs (2) and (3), a company is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (6) if there has been a contravention of a requirement as to—
- (a) the time at which, or
  - (b) the period within which,
- the obligation or request was to be complied with.

## PART 4

### SUPPLEMENTARY PROVISIONS

#### *Power to amend conditions for registration for gross payment*

- 13 (1) The Treasury may by order made by statutory instrument amend this Schedule by—
- (a) adding,
  - (b) varying, or
  - (c) removing,
- a condition for registration for gross payment.
- (2) No statutory instrument containing an order under this paragraph shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

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*“Qualifying period”*

- 14 In this Schedule “the qualifying period” means the period of 12 months ending with the date of the application in question.

*Regulations under this Schedule*

- 15 Any power under this Schedule to make regulations prescribing the evidence required for establishing what is likely to happen at any time includes power to provide for such matters to be presumed (whether conclusively or unless the contrary is shown in the manner provided for in the regulations) from evidence of what has previously happened.
- 16 Regulations under paragraph 3(1), 7 (1) or 11 (1) prescribing the evidence required for establishing the amount by way of relevant payments likely to be received by a person may make different provision according to whether—
- (a) the person is applying for registration for gross payment, or
  - (b) the Board of Inland Revenue are considering whether to make a determination under section 66(1)(a) cancelling the person’s registration for gross payment.

SCHEDULE 12

Section 76

CONSTRUCTION INDUSTRY SCHEME: CONSEQUENTIAL AMENDMENTS

*Records to be kept for purposes of returns*

- 1 (1) Section 12B of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In subsection (4A) (records in respect of which duty to preserve records may not be satisfied by preservation of information contained in them) for paragraph (b) substitute—
- “(b) any record (however described) which is required by regulations under section 70(1)(c) of the Finance Act 2004 to be given to a sub-contractor (within the meaning of section 58 of that Act) on the making of a payment to which section 61 of that Act (deductions on account of tax) applies;”.

*General rule as to when corporation tax is due and payable*

- 2 (1) Section 59D of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (4)(d) (amounts taken into account in determining whether repayment is due under subsection (2)) for “by virtue of regulations under section 559A of the principal Act” substitute “ by virtue of regulations under section 62 of the Finance Act 2004 ”.

*Claim for repayment in advance of liability being established*

- 3 (1) Section 59DA of the Taxes Management Act 1970 is amended as follows.

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- (2) In subsection (7) (deductions under section 559 of the Taxes Act 1988 to be disregarded in considering whether amount paid by company exceeds its probable tax liability, where claim made before return delivered) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

*Priority of claim for tax*

- 4 (1) Section 62 of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (1A)(b) (goods or chattels of person in default not to be taken in execution etc unless person seeking execution pays to collector sums due from person in default in respect of deductions under section 559 of the Taxes Act 1988) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

*Recovery of tax in Scotland*

- 5 (1) Section 63 of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In subsection (3)(b) (application for summary warrant relating to sums due in respect of deductions required to be made under section 559 of the Taxes Act 1988: no requirement to state that 14 days have elapsed since demand) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

*Priority of claim for tax in Scotland*

- 6 (1) Section 64 of the Taxes Management Act 1970 is amended as follows.
- (2) In subsection (1A)(b) (moveable goods and effects of person in default not to be taken by diligence etc unless person proceeding to take goods and effects pays to collector sums due from person in default in respect of deductions under section 559 of the Taxes Act 1988) for “section 559 of the principal Act” substitute “ section 61 of the Finance Act 2004 ”.

*Special returns etc*

- 7 (1) Section 98 of the Taxes Management Act 1970 is amended as follows.
- (2) In the first column of the Table, omit the entry relating to section 561(8) of the Taxes Act 1988.
- (3) In the second column of the Table, omit the entry relating to regulations under section 566(1), (2) or (2A) of that Act.
- (4) In the first column of the Table, insert at the appropriate place— “ Regulations under section 70(3) of the Finance Act 2004. ”.
- (5) In the second column of the Table, insert at the appropriate place— “ Regulations under section 65(2), 69(1), 70(1)(a) or (c) or 71 of the Finance Act 2004. ”.

*Special penalties in the case of certain returns*

- 8 (1) Section 98A of the Taxes Management Act 1970 is amended as follows.

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- (2) In subsection (1) (regulations which may provide for section 98A to apply) for “section 566 (1) (sub-contractors) of the principal Act” substitute “ section 70(1)(a) or 71 of the Finance Act 2004 (sub-contractors) ”.
- (3) In subsection (2)(b) (penalty for failure to make return continuing beyond 12 months)
- (a) after “not exceeding” insert—
- “(i) in the case of a provision of PAYE regulations,”  
and
- (b) at the end insert “, or
- (ii) in the case of a provision of regulations under section 70(1)(a) or 71 of the Finance Act 2004, £3,000.”.
- (4) In subsection (4)(a) (penalty for fraudulently or negligently making incorrect return) after “year of assessment” insert “ (in the case of a provision of PAYE regulations) or period (in the case of a provision of regulations under section 70(1)(a) or 71 of the Finance Act 2004) ”.

*Sub-contractors in the construction industry*

- 9 (1) The Taxes Act 1988 is amended as follows.
- (2) In Part 13, omit Chapter 4.

*Designated international organisations: miscellaneous exemptions*

- 10 (1) Section 582A of the Taxes Act 1988 is amended as follows.
- (2) In subsection (6) (organisation designated for purposes of this subsection not to be person to whom section 560(2) applies) for “section 560(2)” substitute “ section 59 of the Finance Act 2004 ”.

*Application of Income Tax Acts to public departments etc*

- 11 (1) Section 829 of the Taxes Act 1988 is amended as follows.
- (2) In subsection (2A) (subsections (1) and (2) to have effect in relation to Chapter 4 of Part 13 of the Taxes Act 1988 as if whole deduction under section 559 were deduction of income tax)—
- (a) for “Chapter 4 of Part 13 of this Act” substitute “ Chapter 3 of Part 3 of the Finance Act 2004 ”, and
- (b) for “section 559” substitute “ section 61 of that Act ”.

*Provisions for securing payment by company of outstanding tax*

- 12 (1) Section 130 of the Finance Act 1988 (c. 39) is amended as follows.
- (2) In subsection (7)(d) (references to tax payable by company to include amounts it is liable to pay under section 559(4) of the Taxes Act 1988) for “section 559(4) of that Act” substitute “ section 61 of the Finance Act 2004 ”.

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*Supplementary provisions relating to contributions: Great Britain*

- 13 (1) Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) is amended as follows.
- (2) In paragraph 7 (special penalties in case of certain returns) in sub-paragraph (1) (paragraph 7 to apply to certain returns made at the same time as a return made under regulations under section 566 (1) of the Taxes Act 1988 etc) in paragraph (a) for “section 566 (1) (sub-contractors) of the Income and Corporation Taxes Act 1988” substitute “ section 70(1)(a) or 71 (sub-contractors) of the Finance Act 2004 ”.

*Supplementary provisions relating to contributions: Northern Ireland*

- 14 (1) Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) is amended as follows.
- (2) In paragraph 7 (special penalties in case of certain returns) in sub-paragraph (1) (paragraph 7 to apply to certain returns made at the same time as a return made under regulations under section 566 (1) of the Taxes Act 1988 etc) in paragraph (a) for “section 566 (1) (sub-contractors) of the Income and Corporation Taxes Act 1988” substitute “ section 70(1)(a) or 71 (sub-contractors) of the Finance Act 2004 ”.

*Transitional provisions concerning construction workers supplied by agencies*

- 15 (1) Section 56 of the Finance Act 1998 (c. 36) is amended as follows.
- (2) In subsection (8) (meaning of “construction trade”) for “Chapter 4 of Part 13 of the Taxes Act 1988” substitute “ section 74 of the Finance Act 2004 ”.

*Company tax returns, assessments and related matters*

- 16 (1) Schedule 18 to the Finance Act 1998 is amended as follows.
- (2) In paragraph 22 (preservation of information instead of original records) in sub-paragraph (3) (records in respect of which duty to preserve records may not be satisfied by preservation of information contained in them) for paragraph (b) substitute—
- “(b) any record (however described) which is required by regulations under section 70(1)(c) of the Finance Act 2004 to be given to a sub-contractor (within the meaning of section 58 of that Act) on the making of a payment to which section 61 of that Act (deductions on account of tax) applies;”.

*Calculation of deemed employment payment*

- 17 (1) Section 54 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
- (2) In subsection (2) (intermediary to be treated, in calculating the deemed employment payment, as if amounts received subject to deduction under section 559 of the Taxes Act 1988 had been received without deduction) for “section 559 of ICTA” substitute “ section 61 of the Finance Act 2004 ”.

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## SCHEDULE 13

Section 78

## CHILDCARE AND CHILDCARE VOUCHERS

*Childcare*

- 1 In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (miscellaneous exemptions), for section 318 (care for children) substitute—

**“318 Childcare: exemption for employer-provided care**

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision for an employee of care for a child if conditions A to D are met.

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, no such liability arises in respect of that part.

- (3) Condition A is that the child—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense,
- (b) is resident with the employee, or
- (c) is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that—

- (a) the premises on which the care is provided are not used wholly or mainly as a private dwelling, and
- (b) any applicable registration requirement is met.

- (5) The registration requirements are—

- (a) in England and Wales, that under Part 10A of the Children Act 1989;
- (b) in Scotland, that under Part 1 or 2 of the Regulation of Care (Scotland) Act 2001;
- (c) in Northern Ireland, that under Part XI of the Children (Northern Ireland) Order 1995.

- (6) Condition C is that—

- (a) the premises on which the care is provided are made available by the scheme employer alone, or
- (b) the partnership requirements are met.

In this section “scheme employer” means the employer operating the scheme under which the care is provided (who need not be the employer of the employee).

- (7) The partnership requirements are—

- (a) that the care is provided under arrangements made by persons who include the scheme employer,

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- (b) that the premises on which it is provided are made available by one or more of those persons, and
  - (c) that under the arrangements the scheme employer is wholly or partly responsible for financing and managing the provision of the care.
- (8) Condition D is that the care is provided under a scheme that is open—
- (a) to the scheme employer’s employees generally, or
  - (b) generally to those of the scheme employer’s employees at a particular location,
- and that the employee to whom it is provided is either an employee of the scheme employer or is an employee working at the same location as employees of the scheme employer to whom the scheme is open.

### **318A Childcare: limited exemption for other care**

- (1) If conditions A to C are met in relation to the provision for an employee of care for a child, liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, subsection (1) applies in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
  - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that the care is qualifying child care.

For the meaning of “qualifying child care”, see section 318C.

- (5) Condition C is that the care is provided under a scheme that is open—
- (a) to the employer’s employees generally, or
  - (b) generally to those at a particular location.
- (6) For the purposes of this section the “exempt amount”, in any tax year, is £50 for each qualifying week in that year.
- (7) A “qualifying week” means a tax week in which care is provided for a child in circumstances in which conditions A to C are met.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

- (8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

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But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

- (9) An employee is not entitled to an exempt amount under this section and under section 270A (limited exemption for childcare vouchers) in respect of the same tax week.

### **318B Childcare: meaning of “care”, “child” and “parental responsibility”**

- (1) For the purposes of sections 318 and 318A (exemptions for employer-provided or employer-contracted childcare) “care” means any form of care or supervised activity that is not provided in the course of the child’s compulsory education.
- (2) For the purposes of those sections a person is a “child” until the last day of the week in which falls the 1st September following the child’s fifteenth birthday (or sixteenth birthday if the child is disabled).
- (3) For the purposes of subsection (2) a child is disabled if—
- (a) a disability living allowance is payable in respect of him, or has ceased to be payable solely because he is a patient,
  - (b) he—
    - (i) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services),
    - (ii) has been certified as blind in Scotland and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland, or
    - (iii) has been certified as blind in Northern Ireland and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board, or
  - (c) he ceased to be so registered as blind within the previous 28 weeks.
- (4) In subsection (3)(a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or, in Scotland, a young offenders' institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975 or the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.
- (5) For the purposes of sections 318 and 318A “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property.
- (6) In this section and section 318C “local authority” means—
- (a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, the council of a county or county borough;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.



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### **318C Childcare: meaning of “qualifying child care”**

- (1) For the purposes of section 318A “qualifying child care” means registered or approved care within any of subsections (2) to (6) below that is not excluded by subsection (7) below.
- (2) Care provided for a child in England is registered or approved care if it is provided—
  - (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child’s 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999,
  - (e) wholly or mainly in the child’s home by a child care provider approved in accordance with the Tax Credits (Approval of Home Child Care Providers) Scheme 2003, or
  - (f) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002.
- (3) Care provided for a child in Wales is registered or approved care if it is provided—
  - (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child’s 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999.
- (4) Care provided for a child in Scotland is registered or approved care if it is provided—
  - (a) by a person in circumstances where the care service provided by him—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 1 of that Act, or
  - (b) by a local authority in circumstances where the care service provided by the local authority—

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- (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
  - (ii) is registered under Part 2 of that Act.
- (5) Care provided for a child in Northern Ireland is registered or approved care if it is provided—
- (a) by a person registered under Part XI of the Children (Northern Ireland) Order 1995, or
  - (b) by an institution or establishment that does not need to be registered under that Part to provide the care because of an exemption under Article 121 of that Order, or
  - (c) in the case of care provided for a child out of school hours between the child’s 12th birthday and the last day on which he is treated as being a child, by a school on school premises or by an education and library board or an HSS trust.
- (6) Care provided for a child outside the United Kingdom is registered or approved child care if it is provided by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 2002.
- (7) Child care is excluded from section 318A—
- (a) if it is provided by the partner of the employee in question, or
  - (b) if it is provided by a relative of the child wholly or mainly in the child’s home or (if different) the home of a person having parental responsibility for the child.
- (8) In subsection (7)—
- “partner” means one of a married or unmarried couple; and
  - “relative” means parent, grandparent, aunt, uncle, brother or sister, whether by blood, half blood or marriage.

### **318D Childcare: power to vary exempt amount and qualifying conditions**

- (1) The Treasury may by order amend section 318A(6) (employer-contracted care: the exempt amount) so as to substitute a different sum of money for that for the time being specified.
- (2) The Treasury may by regulations make such amendments of the provisions of sections 318 to 318C relating to the qualifying conditions for the exemptions conferred by sections 318 and 318A as appear to them appropriate having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002 relating to entitlement to the child care element of working tax credit.”.

#### *Childcare vouchers*

- 2 (1) Chapter 4 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (taxable benefits: vouchers and credit-tokens) is amended as follows.
- (2) In section 84 (meaning of “non-cash voucher”)—
- (a) in subsection (1), after paragraph (a) insert—

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“(ab) a childcare voucher,”, and  
(b) after subsection (2) insert—

“(2A) In this Chapter “childcare voucher” means a voucher, stamp or similar document or token intended to enable a person to obtain the provision of care for a child (whether or not in exchange for it).”.

(3) In section 87 (benefit of non-cash voucher treated as earnings), after subsection (3) insert—

“(3A) In the case of a childcare voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the provision of care for a child which may be obtained by using it.”.

(4) In section 95 (disregard for money, goods or services obtained), after subsection (3) insert—

“(3A) In the case of a childcare voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the provision of care for a child obtained by using it.”.

3 In Chapter 6 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (exemptions: non-cash vouchers and credit-tokens), after section 270 insert—

**“270A Limited exemption for qualifying childcare vouchers**

(1) If qualifying childcare vouchers are provided for an employee, liability to income tax by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit tokens) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.

(2) A “qualifying childcare voucher” means a non-cash voucher in relation to which Conditions A to C are met.

(3) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

(4) Condition B is that the voucher can only be used to obtain qualifying child care.

(5) Condition C is that the vouchers are provided under a scheme that is open—

- (a) to the employer’s employees generally, or
- (b) generally to those at a particular location.

(6) For the purposes of this section the “exempt amount”, in any tax year, is £50 for each qualifying week in that year.

(7) A “qualifying week” means a tax week in respect of which a qualifying childcare voucher is received.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the

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last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

- (8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

- (9) An employee is not entitled to an exempt amount under this section and under section 318A (limited exemption for employer-contracted childcare) in respect of the same tax week.

- (10) In this section “care”, “child”, “parental responsibility” and “qualifying child care” have the same meaning as in section 318A (see sections 318B and 318C).

- (11) The powers conferred by section 318D (childcare: power to vary exempt amount and qualifying conditions) are exercisable—

- (a) in relation to the exempt amount specified in subsection (6) above as in relation to the exempt amount specified in section 318A(6), and
- (b) in relation to the qualifying conditions for the exemption conferred by this section as in relation to the qualifying conditions for the exemption conferred by section 318A.”.

## SCHEDULE 14

Section 80

### VANS

1 The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

2 (1) Section 114 (cars, vans and related benefits) is amended as follows.

- (2) In subsection (2), in paragraph (c), for “166” substitute “ 159 ”and after that paragraph insert “; and

- (d) sections 160 to 164 provide for the cash equivalent of the benefit of any fuel provided for the van to be treated as earnings in certain circumstances.”

(3) After subsection (3) insert—

“(3A) This Chapter does not apply to a van in relation to a tax year if the private use of the van during the tax year by the employee or member of the employee’s family or household is insignificant.”

(4) In subsection (4), insert at the end— “ section 169A (van available to more than one member of family or household employed by same employer). ”

3 In section 116(2) (when car is first made available and last day on which car is available), after “car”, in each place, insert “ or van ”.

4 In section 119 (where alternative to benefit of car offered), after “car”, in each place (including the heading), insert “ or van ”.

5 For sections 155 to 166 substitute—

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### “155 Cash equivalent of the benefit of a van

- (1) What is the cash equivalent of the benefit of a van for a tax year depends on whether or not the restricted private use condition is met in relation to the van for the year.
- (2) The cash equivalent of the benefit of the van for the year is—
  - (a) nil if that condition is met in relation to the van for the tax year, and
  - (b) the amount given by subsection (3) if it is not.
- (3) That amount is—
  - (a) where the tax year is the tax year 2005-06 or 2006-07—
    - (i) £500 if the age of the van is less than 4 years at the end of the tax year, and
    - (ii) £350 in any other case, and
  - (b) where the tax year is a later tax year, £3,000.
- (4) The restricted private use condition is met in relation to a van for a tax year if—
  - (a) the commuter use requirement is satisfied throughout the year (or the part of the year on which it is available to the employee) or the extent to which it is not satisfied during that period is insignificant, and
  - (b) the business travel requirement is satisfied throughout the year (or the part of the year on which it is available to the employee).
- (5) The commuter use requirement is satisfied at any time if—
  - (a) the terms on which the van is available to the employee at the time prohibit its private use otherwise than for the purposes of ordinary commuting or travel between two places that is for practical purposes substantially ordinary commuting, and
  - (b) neither the employee nor a member of the employee’s family or household makes private use of the van at the time otherwise than for those purposes.
- (6) In subsection (5) “ordinary commuting” has the same meaning as in section 338 (travel for necessary attendance) (see subsection (3) of that section).
- (7) The business travel requirement is satisfied at a time if the van is available to the employee at the time mainly for use for the purposes of the employee’s business travel (see section 171(1)).
- (8) The cash equivalent of the van may be reduced—
  - (a) under section 156 for any periods when the van is unavailable,
  - (b) under section 157 where the van is shared, and
  - (c) under section 158 in respect of payments by the employee for the private use of the van.

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*Vans: reductions of cash equivalent*

**156 Reduction for periods when van unavailable**

- (1) The cash equivalent of the benefit of a van for a tax year under section 155(2) (a) or (b) is to be reduced if the van has been unavailable on any day during the year.
- (2) For the purposes of this section a van is unavailable on any day if the day—
  - (a) falls before the first day on which the van is available to the employee,
  - (b) falls after the last day on which the van is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the van is not available to the employee.
- (3) The amount of the reduction is given by the formula—

$$\frac{U}{Y} \times CE$$

where—

U is the number of days in the year on which the van is unavailable,  
Y is the number of days in the year, and  
CE is the amount of the cash equivalent before any reduction.

*Reduction of cash equivalent where van is shared*

**157 Reduction of cash equivalent where van is shared**

- (1) This section applies if in a tax year a van—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee’s private use.
- (2) The cash equivalent of the benefit of the van to each of those employees for that year—
  - (a) is to be calculated separately under sections 155 and 156, and
  - (b) is then to be reduced on a just and reasonable basis.
- (3) If —
  - (a) any of the employees mentioned in subsection (1)(a) (“E”) is a member of the family or household of another of them (“M”), and
  - (b) E’s employment is an excluded employment,
 the availability of the van to E is to be disregarded when applying subsection (2)(b) in respect of M.

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- (4) In this section the reference to the van being available for each employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.

*Reduction for payments for private use*

**158 Reduction for payments for private use**

- (1) The cash equivalent of the benefit of a van for a tax year under section 155(2) (a) or (b) (after any reduction under sections 156 and 157) is to be reduced if, as a condition of the van being available for the employee's private use, the employee—
- (a) is required in that year to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.
- (2) If the amount paid by the employee in respect of that year is equal to or exceeds that cash equivalent, it is reduced to nil.
- (3) In any other case that cash equivalent is reduced by the amount paid by the employee.
- (4) In this section the reference to the van being available for the employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.

*Modification of provisions where van temporarily replaced*

**159 Modification of provisions where van temporarily replaced**

- (1) This section applies if—
- (a) the van normally available to an employee (“the normal van”) is not available to the employee for a period of less than 30 days,
  - (b) another van (“the replacement van”) is made available to the employee in order to replace the normal van for the whole or part of that period, and
  - (c) the employee is chargeable to tax in respect of both the normal van and the replacement van by virtue of section 154.
- (2) If this section applies—
- (a) section 156 applies so that the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van, and
  - (b) sections 155, 157 and 158 apply as if the replacement van were the normal van.

*Van fuel: benefit treated as earnings*

**160 Benefit of van fuel treated as earnings**

- (1) If in a tax year—

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- (a) fuel is provided for a van by reason of an employee's employment,
  - (b) that person is chargeable to tax in respect of the van by virtue of section 154, and
  - (c) the cash equivalent of the van for that year is that under section 155(2)(b),
- the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 161 to 164.
  - (3) Fuel is to be treated as provided for a van, in addition to any other way in which it may be provided, if—
    - (a) any liability in respect of the provision of fuel for the van is discharged,
    - (b) a non-cash voucher or a credit-token is used to obtain fuel for the van,
    - (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the van, or
    - (d) any sum is paid in respect of expenses incurred in providing fuel for the van.
  - (4) References in this section to fuel do not include any facility or means for supplying electrical energy for an electrically propelled vehicle.

#### **161 Van fuel: the cash equivalent**

The cash equivalent of the benefit of the fuel is—

- (a) where the tax year is the tax year 2005-06 or 2006-07, nil, and
- (b) where the tax year is a later tax year, £500.

#### **162 Van fuel: nil cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
  - (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee's private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).

#### **163 Van fuel: proportionate reduction of cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the van for which the fuel is provided is unavailable (within the meaning of section 156 (reduction for periods when van unavailable)).
- (2) But if section 159 (van temporarily replaced) applies—



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- (a) section 160 applies as if the replacement van were the normal van, and
  - (b) for the purposes of subsection (1) the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van.
- (3) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—
- (a) the facility for the provision of fuel as mentioned in section 160 (1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use and the employee does make good that expense.
- (4) The fact that any of the conditions specified in subsection (3) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (5) Where the cash equivalent is to be proportionately reduced under subsection (1) or (3) (or under both those subsections), the reduced amount is given by the formula—

$$CE \times \frac{Y - D}{Y}$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in the tax year on which either the van is unavailable or one or more of the conditions in subsection (3) is met.

#### **164 Van fuel: reduction of cash equivalent**

If a reduction of the cash equivalent of the benefit of the van for which the fuel is provided is made under section 157 (reduction of cash equivalent where van is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.”

6 After section 169 insert—

#### **“169A Van available to more than one member of family or household employed by same employer**

- (1) This section applies where—
  - (a) an employee (“E”) and a member of the employee’s family or household (“M”) are employed by the same employer, and

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- (b) as a result of a van being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the van in that year by virtue of section 154.
  - (2) The cash equivalent of the benefit of the van and of any fuel provided for the van by reason of E's employment is not to be treated as E's earnings for that year if—
    - (a) M is chargeable to tax in respect of the van in that year by virtue of section 154, or
    - (b) where M's employment is an excluded employment, M had the benefit of the van in M's own right as an employee and condition A or B is met.
  - (3) Condition A is met if equivalent vans are made available on the same terms to employees who—
    - (a) are in similar employment to M with the same employer, and
    - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
  - (4) Condition B is met if the making available of an equivalent van is in accordance with the normal commercial practice for an employment of the kind held by M.”
- 7 (1) Section 170 (orders etc.) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The Treasury may by order substitute a different amount for that for the time being specified in—
- (a) section 155(2)(a) (cash equivalent where van subject only to restricted private use by employee), and
  - (b) section 155(3)(b) (cash equivalent in other cases).”
- (3) In subsection (2), after “(1)” insert “ or (1A) ”.
- (4) In subsection (5), insert at the end “ or section 161(b) (van fuel: cash equivalent) ”.
- 8 In section 237 (exemption from Chapter 10 of Part 3 in respect of provision of workplace parking), in subsection (3)(a) (car parking space to be “workplace parking”), for “car parking space” substitute “ parking space for a car or van ”.

## SCHEDULE 15

Section 84

### CHARGE TO INCOME TAX ON BENEFITS RECEIVED BY FORMER OWNER OF PROPERTY

#### *Introductory*

- 1 In this Schedule—
- “HTA 1984” means the Inheritance Tax Act 1984 (c. 51);
  - [<sup>F44</sup>“ITTOIA 2005” means the Income Tax (Trading and Other Income Act) 2005;]

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- “the 1986 Act” means the Finance Act 1986 (c. 41);
- “chattel” means any tangible movable property (or, in Scotland, corporeal movable property) other than money;
- “excluded transaction” has the meaning given by paragraph 10;
- “intangible property” means any property other than chattels or interests in land;
- “interest in land” has the same meaning as in Chapter 4 of Part 6 of IHTA 1984;
- “land” has the same meaning as in IHTA 1984;
- “prescribed” means prescribed by regulations;
- “property” has the same meaning as in IHTA 1984;
- “regulations” means regulations made by the Treasury under this Schedule;
- “settlement” and “settled property” have the same meanings as in IHTA 1984.

#### Textual Amendments

**F44** Words in Sch. 15 para. 1 inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 653\(2\)](#) (with [Sch. 2](#))

- 2 Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule, but as if in that section “relative” included uncle, aunt, nephew and niece and “settlement”, “settlor” and “trustee” had the same meanings as in IHTA 1984.

#### Land

- 3 (1) This paragraph applies where—
- (a) an individual (“the chargeable person”) occupies any land (“the relevant land”), whether alone or together with other persons, and
  - (b) the disposal condition or the contribution condition is met as respects the land.
- (2) The disposal condition is that—
- (a) at any time after 17th March 1986 the chargeable person owned an interest—
    - (i) in the relevant land, or
    - (ii) in other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of an interest in the relevant land, and
  - (b) the chargeable person has disposed of all, or part of, his interest in the relevant land or the other property, otherwise than by an excluded transaction.
- (3) The contribution condition is that at any time after 17th March 1986 the chargeable person has directly or indirectly provided, otherwise than by an excluded transaction, any of the consideration given by another person for the acquisition of—
- (a) an interest in the relevant land, or

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- (b) an interest in any other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of an interest in the relevant land.
- (4) For the purposes of this paragraph a disposition which creates a new interest in land out of an existing interest in land is to be taken to be a disposal of part of the existing interest.
- (5) Where this paragraph applies to a person in respect of the whole or part of a year of assessment, an amount equal to the chargeable amount determined under paragraph 4 is to be treated as income of his chargeable to income tax.
- 4 (1) For any taxable period the chargeable amount in relation to the relevant land is the appropriate rental value (as determined under sub-paragraph (2)), less the amount of any payments which, in pursuance of any legal obligation, are made by the chargeable person during the period to the owner of the relevant land in respect of the occupation of the land by the chargeable person.
- (2) The appropriate rental value is—

$$R \times \frac{DV}{V}$$

where—

R is the rental value of the relevant land for the taxable period,

DV is—

- (a) in a case falling within paragraph 3(2)(a)(i), the value as at the valuation date of the interest in the relevant land that was disposed of as mentioned in paragraph 3(2)(b) by the chargeable person or, where the disposal was a non-exempt sale, the appropriate proportion of that value,
- (b) in a case falling within paragraph 3(2)(a)(ii), such part of the value of the relevant land at the valuation date as can reasonably be attributed to the property originally disposed of by the chargeable person or, where the original disposal was a non-exempt sale, to the appropriate proportion of that property, and
- (c) in a case falling within paragraph 3(3), such part of the value of the relevant land at the valuation date as can reasonably be attributed to the consideration provided by the chargeable person, and

V is the value of the relevant land at the valuation date.

- (3) The “rental value” of the land for the taxable period is the rent which would have been payable for the period if the property had been let to the chargeable person at an annual rent equal to the annual value.
- (4) The disposal by the chargeable person of an interest in land is a “non-exempt sale” if (although not an excluded transaction) it was a sale of his whole interest in the property for a consideration paid in money in sterling or any other currency; and, in relation to a non-exempt sale, “the appropriate proportion” is—

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$$\frac{MV - P}{MV}$$

where—

MV is the value of the interest in land at the time of the sale;

P is the amount paid.

- (5) Regulations may—
- (a) in relation to any valuation date, provide for a valuation of the relevant land or any interest in the relevant land by reference to an earlier valuation date to apply subject to any prescribed adjustments, and
  - (b) in relation to any year of assessment, provide for a determination of the rental value of the land by reference to any earlier year of assessment to apply subject to any prescribed adjustments.
- (6) In this paragraph—
- “the taxable period” means the year of assessment, or part of a year of assessment, during which paragraph 3 applies to the chargeable person;
- “the valuation date”, in relation to a taxable period, means such date as may be prescribed.
- 5 (1) For the purposes of paragraph 4 the annual value of the relevant land is the rent which might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (2) For the purposes of sub-paragraph (1) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) In this paragraph “relevant service” means a service other than the repair, insurance or maintenance of the premises.

#### *Chattels*

- 6 (1) This paragraph applies where—
- (a) an individual (“the chargeable person”) is in possession of, or has the use of, a chattel, whether alone or together with other persons, and
  - (b) the disposal condition or the contribution condition is met as respects the chattel.
- (2) The disposal condition is that—
- (a) at any time after 17th March 1986 the chargeable person had (whether alone or jointly with others) owned—

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- (i) the chattel, or
  - (ii) any other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of the chattel, and
  - (b) the chargeable person disposed of all or part of his interest in the chattel or other property otherwise than by an excluded transaction.
- (3) The contribution condition is that at any time after 17th March 1986 the chargeable person had directly or indirectly provided, otherwise than by an excluded transaction, any of the consideration given by another person for the acquisition of—
- (a) the chattel, or
  - (b) any other property the proceeds of the disposal of which were (directly or indirectly) applied by another person towards the acquisition of the chattel.
- (4) For the purposes of this paragraph, a disposition which creates a new interest in a chattel out of an existing interest in a chattel is to be taken to be a disposal of part of the existing interest.
- (5) Where this paragraph applies to a person in respect of the whole or part of a year of assessment, an amount equal to the chargeable amount determined under paragraph 7 is to be treated as income of his chargeable to income tax.
- 7 (1) For any taxable period the chargeable amount in relation to any chattel is the appropriate amount (as determined under sub-paragraph (2)), less the amount of any payments which, in pursuance of any legal obligation, are made by the chargeable person during the period to the owner of the chattel in respect of the possession or use of the chattel by the chargeable person.
- (2) The appropriate amount is—

$$N \times \frac{DV}{V}$$

where—

N is the amount of the interest that would be payable for the taxable period if interest were payable at the prescribed rate on an amount equal to the value of the chattel as the valuation date,

DV is—

- (a) in a case falling within paragraph 6(2)(a)(i), the value as at the valuation date of the interest in the chattel that was disposed of as mentioned in paragraph 6(2)(b) by the chargeable person or, where the disposal was a non-exempt sale, the appropriate proportion of that value,
- (b) in a case falling within paragraph 6(2)(a)(ii), such part of the value of the chattel at the valuation date as can reasonably be attributed to the property originally disposed of by the chargeable person or, where the original disposal was a non-exempt sale, to the appropriate proportion of that property, and
- (c) in a case falling within paragraph 6(3), such part of the value of the chattel at the valuation date as can reasonably be attributed to the consideration provided by the chargeable person, and

V is the value of the chattel at the valuation date.

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- (3) The disposal by the chargeable person of an interest in a chattel is a “non-exempt sale” if (although not an excluded transaction) it was a sale of his whole interest in the chattel for a consideration paid in money in sterling or any other currency; and, in relation to a non-exempt sale, “the appropriate proportion” is—

$$\frac{MV - P}{MV}$$

where—

MV is the value of the interest in the chattel at the time of the sale;

P is the amount paid.

- (4) Regulations may, in relation to any valuation date, provide for a valuation of the chattel or any interest in the chattel by reference to an earlier valuation date to apply subject to any prescribed adjustments.
- (5) In this paragraph—
- “the taxable period” means the year of assessment, or part of a year of assessment, during which paragraph 6 applies to the chargeable person;
  - “the valuation date”, in relation to a taxable period, means such date as may be prescribed.

*Intangible property comprised in settlement where settlor retains an interest*

- 8 (1) This paragraph applies where—
- (a) the terms of a settlement, as they affect any property comprised in the settlement, are such that any income arising from the property would be treated by virtue of [<sup>F45</sup>section 624 of ITTOIA 2005] (income arising under settlement where settlor retains an interest) as income of a person (“the chargeable person”) who is for the purposes of [<sup>F46</sup>Chapter 5 of Part 5] of that Act the settlor,
  - (b) any such income would be so treated even if [<sup>F47</sup>section 625(1) of ITTOIA 2005 (settlor's retained interest)] did not include any reference to the spouse of the settlor, and
  - (c) that property includes any property as respects which the condition in sub-paragraph (2) is met (“the relevant property”).
- (2) The condition mentioned in sub-paragraph (1)(c) is that the property is intangible property which is or represents property which the chargeable person settled, or added to the settlement, after 17th March 1986.
- (3) Where this paragraph applies in respect of the whole or part of a year of assessment, an amount equal to the chargeable amount determined under paragraph 9 is to be treated as income of the chargeable person chargeable to income tax.

**Textual Amendments**

**F45** Words in Sch. 15 para. 8(1)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(3\)\(a\)\(i\)](#) (with Sch. 2)

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- F46** Words in Sch. 15 para. 8(1)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(3\)\(a\)\(ii\)](#) (with Sch. 2)
- F47** Words in Sch. 15 para. 8(1)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(3\)\(b\)](#) (with Sch. 2)

- 9 (1) For any taxable period the chargeable amount in relation to the relevant property is N minus T where—

N is the amount of the interest that would be payable for the taxable period if interest were payable at the prescribed rate on an amount equal to the value of the relevant property at the valuation date, and

T is the amount of any income tax or capital gains tax payable by the chargeable person in respect of the taxable period by virtue of any of the following provisions—

- (a) [<sup>F48</sup>section 461 of ITTOIA 2005],
- (b) [<sup>F49</sup>section 624 of that Act],
- (c) section 739 of [<sup>F50</sup>the Taxes Act 1988],
- (d) section 77 of the Taxation of Chargeable Gains Act 1992 (c. 12), and
- (e) section 86 of that Act,

so far as the tax is attributable to the relevant property.

- (2) Regulations may, in relation to any valuation date, provide for a valuation of the relevant property by reference to an earlier valuation date to apply subject to any prescribed adjustments.

- (3) In this paragraph—

“the taxable period” means the year of assessment, or part of a year of assessment, during which paragraph 8 applies to the chargeable person;

“the valuation date”, in relation to a year of assessment, means such date as may be prescribed.

#### Textual Amendments

- F48** Words in Sch. 15 para. 9(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(4\)\(a\)](#) (with Sch. 2)
- F49** Words in Sch. 15 para. 9(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(4\)\(b\)](#) (with Sch. 2)
- F50** Words in Sch. 15 para. 9(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(4\)\(c\)](#) (with Sch. 2)

#### Excluded transactions

- 10 (1) For the purposes of paragraphs 3(2) and 6(2) (the disposal condition), the disposal of any property is an “excluded transaction” in relation to any person (“the chargeable person”) if—

- (a) it was a disposal of his whole interest in the property, except for any right expressly reserved by him over the property, either—
  - (i) by a transaction made at arm’s length with a person not connected with him, or
  - (ii) by a transaction such as might be expected to be made at arm’s length between persons not connected with each other,



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- (b) the property was transferred to his spouse (or where the transfer has been ordered by a court, to his former spouse),
  - (c) it was a disposal by way of gift (or, where the transfer is for the benefit of his former spouse, in accordance with a court order), by virtue of which the property became settled property in which his spouse or former spouse is beneficially entitled to an interest in possession,
  - (d) the disposal was a disposition falling within section 11 of IHTA 1984 (dispositions for maintenance of family), or
  - (e) the disposal is an outright gift to an individual and is for the purposes of IHTA 1984 a transfer of value that is wholly exempt by virtue of section 19 (annual exemption) or section 20 (small gifts).
- (2) For the purposes of paragraphs 3(3) and 6(3) (the contribution condition) the provision by a person (“the chargeable person”) of consideration for another’s acquisition of any property is an “excluded transaction” in relation to the chargeable person if—
- (a) the other person was his spouse (or, where the transfer has been ordered by the court, his former spouse),
  - (b) on its acquisition the property became settled property in which his spouse or former spouse is beneficially entitled to an interest in possession,
  - (c) the provision of the consideration constituted an outright gift of money (in sterling or any other currency) by the chargeable person to the other person and was made at least seven years before the earliest date on which the chargeable person met the condition in paragraph 3(1)(a) or, as the case may be, 6(1)(a),
  - (d) the provision of the consideration is a disposition falling within section 11 of IHTA 1984 (dispositions for maintenance of family), or
  - (e) the provision of the consideration is an outright gift to an individual and is for the purposes of IHTA 1984 a transfer of value that is wholly exempt by virtue of section 19 (annual exemption) or section 20 (small gifts).
- (3) A disposal is not an excluded transaction by virtue of sub-paragraph (1)(c) or (2) (b), if the interest in possession of the spouse or former spouse has come to an end otherwise than on the death of the spouse or former spouse.

#### *Exemptions from charge*

- 11 (1) Paragraph 3 (land), paragraph 6 (chattels) and paragraph 8 (intangible property) do not apply to a person at a time when his estate for the purposes of IHTA 1984 includes—
- (a) the relevant property, or
  - (b) other property—
    - (i) which derives its value from the relevant property, and
    - (ii) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property.
- (2) Where the estate for the purposes of IHTA 1984 of a person to whom paragraph 3, 6 or 8 applies includes property—
- (a) which derives its value from the relevant property, and
  - (b) whose value, so far as attributable to the relevant property, is substantially less than the value of the relevant property,

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the appropriate rental value in paragraph 4, the appropriate amount in paragraph 7 or the chargeable amount in paragraph 9 (as the case may be) is to be reduced by such proportion as is reasonable to take account of the inclusion of the property in his estate.

- (3) Paragraphs 3, 6 and 8 do not apply to a person at a time when—
- (a) the relevant property, or
  - (b) any other property—
    - (i) which derives its value from the relevant property, and
    - (ii) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property,
 falls within sub-paragraph (5) in relation to him.
- (4) Where any property which falls within sub-paragraph (5) in relation to a person includes property—
- (a) which derives its value from the relevant property, and
  - (b) whose value, so far as attributable to the relevant property, is substantially less than the value of the relevant property,
- the appropriate rental value in paragraph 4, the appropriate amount in paragraph 7 or the chargeable amount in paragraph 9 (as the case may be) is to be reduced by such proportion as is reasonable to take account of that fact.
- (5) Property falls within this sub-paragraph in relation to a person at a time when it—
- (a) would fall to be treated by virtue of any provision of Part 5 of the 1986 Act (inheritance tax) as property which in relation to him is property subject to a reservation,
  - (b) would fall to be so treated but for any of paragraphs (d) to (i) of subsection (5) of section 102 of the 1986 Act (certain cases where disposal by way of gift is an exempt transfer for purposes of inheritance tax),
  - (c) would fall to be so treated but for subsection (4) of section 102B of the 1986 Act (gifts with reservation: share of interest in land), or would have fallen to be so treated but for that subsection if the disposal by way of gift of an undivided share of an interest in land had been made on or after 9th March 1999, or
  - (d) would fall to be so treated but for section 102C(3) of, and paragraph 6 of Schedule 20 to, the 1986 Act (exclusion of benefit).
- (6) Where at any time the value of a person's estate for the purposes of IHTA 1984 is reduced by an excluded liability affecting any property, that property is not to be treated for the purposes of sub-paragraph (1) or (2) as comprised in his estate except to the extent that the value of the property exceeds the amount of the excluded liability.
- (7) For the purposes of sub-paragraph (6) a liability is an excluded liability if—
- (a) the creation of the liability, and
  - (b) any transaction by virtue of which the person's estate came to include the relevant property or property which derives its value from the relevant property or by virtue of which the value of property in his estate came to be derived from the relevant property,

were associated operations, as defined by section 268 of IHTA 1984.

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- (8) In determining whether any property falls within sub-paragraph (5)(b), (c) or (d) in a case where the contribution condition in paragraph 3(3) or 6(3) is met, paragraph 2(2)(b) of Schedule 20 (exclusion of gifts of money) is to be disregarded.
- (9) In sub-paragraphs (1) to (8) “the relevant property” means—
- (a) in relation to paragraphs 3 and 6—
    - (i) where the disposal condition in paragraph 3(2) or 6(2) is met, the property disposed of,
    - (ii) where the contribution condition in paragraph 3(3) or 6(3) is met, the property representing the consideration directly or indirectly provided,
  - (b) in relation to paragraph 8, the relevant property within the meaning of that paragraph.
- (10) Property is not to be treated as falling within sub-paragraph (5)(b) at any time in a case falling within section 102(5)(h) of the 1986 Act unless the property remains subject to trusts which comply with the requirements of paragraph 3 (1) of Schedule 4 to IHTA 1984.

*Chargeable person resident or domiciled outside the United Kingdom*

- 12 (1) This Schedule does not apply in relation to any person for any year of assessment during which he is not resident in the United Kingdom.
- (2) Where in any year of assessment a person is resident in the United Kingdom but is domiciled outside the United Kingdom, this Schedule does not apply to him unless the property falling within paragraph 3(1)(a), 6(1)(a) or 8(1)(c) is situated in the United Kingdom.
- (3) In the application of this Schedule to a person who was at any time domiciled outside the United Kingdom, no regard is to be had to any property which is for the purposes of IHTA 1984 excluded property in relation to him by virtue of section 48(3)(a) of that Act.
- (4) For the purposes of this paragraph, a person is to be treated as domiciled in the United Kingdom at any time only if he would be so treated for the purposes of IHTA 1984.

*Exemption in cases where aggregate notional annual values do not exceed £5,000*

- 13 (1) This paragraph applies where, in relation to any person who would (apart from this paragraph) be chargeable under this Schedule for any year of assessment, the aggregate of the amounts specified in sub-paragraph (2) in respect of that year does not exceed £5,000.
- (2) Those amounts are—
- (a) in relation to any land to which paragraph 3 applies in respect of him, the appropriate rental value as determined under paragraph 4(2),
  - (b) in relation to any chattel to which paragraph 6 applies in respect of him, the appropriate amount as determined under paragraph 7(2), and
  - (c) in relation to any intangible property to which paragraph 8 applies in respect of him, the chargeable amount determined under paragraph 9.

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- (3) Where this paragraph applies, the person is not chargeable for that year of assessment under any of the following provisions—
- (a) paragraph 3(5) (land),
  - (b) paragraph 6(5) (chattels), or
  - (c) paragraph 8(3) (intangible property).

*Power of Treasury to confer further exemptions by regulations*

- 14 Regulations may confer further exemptions from the charges to income tax imposed by paragraphs 3, 6 and 8.

*Valuation*

- 15 Except as otherwise provided by this Schedule, the value of any property shall for the purposes of this Schedule be the price which the property might reasonably be expected to fetch if sold in the open market at that time; but that price shall not be assumed to be reduced on the ground that the whole property is to be placed on the market at one and the same time.

*Changes in distribution of deceased's estate*

- 16 Any disposition made by a person (“the chargeable person”) in relation to an interest in the estate of a deceased person is to be disregarded for the purposes of this Schedule if by virtue of section 17 of IHTA 1984 (changes in distribution of deceased’s estate, etc.) the disposition is not treated for the purposes of inheritance tax as a transfer of value by the chargeable person.

*Guarantees*

- 17 Where a person (“A”) acts as guarantor in respect of a loan made to another person (“B”) by a third party in connection with B’s acquisition of any property, the mere giving of the guarantee is not to be regarded as the provision by A of consideration for B’s acquisition of the property.

*Persons chargeable under different provisions by reference to same property*

- 18 (1) Where, in any year of assessment, a person (“the chargeable person”) is (apart from this paragraph) chargeable to income tax both—
- (a) under paragraph 3 (land) or paragraph 6 (chattels) by reason of his occupation of any land or his possession or use of any chattel, and
  - (b) under paragraph 8 (intangible property) by reference to any intangible property which derives its value (whether in whole or part) from the land or the chattel,
- he is to be charged to income tax under whichever provision produces the higher chargeable amount in relation to him.
- (2) Where sub-paragraph (1) applies, only the amount under the paragraph under which he is chargeable is to be taken into account in relation to the chargeable person for the purposes of paragraph 13(2).

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*Relationship with Part 3 of Income Tax (Earnings and Pensions) Act 2003*

- 19 Where, in any year of assessment, a person is (apart from this paragraph) chargeable, in respect of his occupation of any land or his possession or use of any chattel, to income tax both—
- (a) under this Schedule, and
  - (b) under Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1),
- the provisions of that Part shall have priority and he shall not be chargeable to income tax under this Schedule, except to the extent that the amount chargeable under this Schedule exceeds the amount to be treated as earnings under that Part.

*Regulations*

- 20 (1) Regulations under this Schedule may—
- (a) make different provision for different cases, and
  - (b) include transitional provisions and savings.
- (2) Any power conferred by this Schedule to prescribe a rate of interest includes power—
- (a) to prescribe different rates in relation to property of different descriptions, and
  - (b) to prescribe a rate by reference to a rate specified in the regulations.

*Election for application of inheritance tax provisions*

- 21 (1) This paragraph applies where—
- (a) a person (“the chargeable person”) would (apart from this paragraph) be chargeable under paragraph 3 (land) or paragraph 6 (chattels) for any year of assessment (“the initial year”) by reference to his enjoyment of any property (“the relevant property”), and
  - (b) he has not been chargeable under the paragraph in question in respect of any previous year of assessment by reference to his enjoyment of the relevant property, or of any other property for which the relevant property has been substituted.
- (2) The chargeable person may elect in accordance with paragraph 23 that—
- (a) the preceding provisions of this Schedule shall not apply to him during the initial year and subsequent years of assessment by reference to his enjoyment of the relevant property or of any property which may be substituted for the relevant property, but
  - (b) so long as the chargeable person continues to enjoy the relevant property or any property which is substituted for the relevant property—
    - (i) the chargeable proportion of the property is to be treated for the purposes of Part 5 of the 1986 Act (in relation to the chargeable person) as property subject to a reservation, and
    - (ii) section 102(3) and (4) of that Act shall apply.
- (3) In this paragraph, “the chargeable proportion”, in relation to any property, means—

$$\frac{DV}{V}$$

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where DV and V are to be read in accordance with paragraph 4(2) or 7(2), as the case requires, but as if—

- (a) any reference in paragraph 4(2) or 7(2) to the valuation date were a reference—
  - (i) in the case of property falling within subsection (3) of section 102 of the Finance Act 1986, to the date of the death of the chargeable person, and
  - (ii) in the case of property falling within subsection (4) of that section, to the date on which the property ceases to be treated as property subject to a reservation, and
- (b) the transactions to be taken into account in calculating DV included transactions after the time when the election takes effect as well as transactions before that time.

- (4) For the purposes of this paragraph a person “enjoys” property if—
- (a) in the case of an interest in land, he occupies the land, and
  - (b) in the case of an interest in a chattel, he is in possession of, or has the use of, the chattel.

- 22 (1) This paragraph applies where—
- (a) a person (“the chargeable person”) would (apart from this paragraph) be chargeable under paragraph 8 (intangible property) for any year of assessment (“the initial year”) by reference to any property (“the relevant property”), and
  - (b) he has not been chargeable under that paragraph in respect of any previous year of assessment by reference to the relevant property or any property which the relevant property represents or is derived from.
- (2) The chargeable person may elect in accordance with paragraph 23 that—
- (a) the preceding provisions of this Schedule shall not apply to him during the initial year and subsequent years of assessment by reference to the relevant property or any property which represents or is derived from the relevant property, but
  - (b) so long as the conditions in sub-paragraph (3) are satisfied—
    - (i) the relevant property and any property which represents or is derived from the relevant property shall be treated for the purposes of Part 5 of the 1986 Act (in relation to the chargeable person) as property subject to a reservation, and
    - (ii) section 102(3) and (4) of the 1986 Act shall apply.
- (3) The conditions referred to in sub-paragraph (2)(b) are—
- (a) that the relevant property or the property which represents or is derived from the relevant property remains comprised in the settlement, and
  - (b) that any income arising under the settlement would be treated by virtue of <sup>[F51]</sup>section 624 of ITTOIA 2005] as income of the chargeable person.

#### Textual Amendments

**F51** Words in Sch. 15 para. 22(3)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 653\(5\)](#) (with Sch. 2)

- 23 (1) In this paragraph—  
 “election” means an election under paragraph 21 or 22;

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“the relevant filing date” means 31st January in the year of assessment that immediately follows the initial year within the meaning of paragraph 21 or (as the case requires) paragraph 22.

- (2) The election must be made in the prescribed manner.
- (3) The election must be made on or before the relevant filing date, unless the chargeable person can show a reasonable excuse for the failure to make the election by that date.
- (4) Where the chargeable person can show reasonable excuse for the failure to make the election on or before the relevant filing date, the election must be made on or before such later date as may be prescribed.
- (5) The election may be withdrawn or amended, during the life of the chargeable person, at any time on or before the relevant filing date.
- (6) Subject to sub-paragraph (5), the election takes effect for the purposes of inheritance tax from the beginning of the initial year within the meaning of paragraph 21 or (as the case requires) paragraph 22 or, if later, the date on which the chargeable person would (but for the election) have first become chargeable under this Schedule by reference to the property to which the election relates.

## SCHEDULE 16

Section 85

### RELIEF WHERE NATIONAL INSURANCE CONTRIBUTIONS MET BY EMPLOYEE

#### *Income tax relief: restricted securities*

- 1 (1) Chapter 2 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: restricted securities) is amended as follows.
- (2) In section 426 (charge on occurrence of chargeable event), for subsections (1) to (4) substitute—
  - “(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
  - (2) For this purpose—
    - (a) “chargeable event” has the meaning given by section 427,
    - (b) “the taxable amount” is the amount determined under section 428, and
    - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
  - (3) Relief may be available under section 428A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.”.
- (3) After section 428 insert—

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### “428A Relief for secondary Class 1 contributions met by employee

- (1) Relief is available under this section against an amount counting as employment income under section 426 (“the employment income amount”) if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
  - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1) (a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
  - (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1) (b), has become the employee’s liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the chargeable event occurs.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by the Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).”.

#### Commencement Information

I32 Sch. 16 para. 1 in force at 1.9.2004 by S.I. 2004/1945, art. 2



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*Income tax relief: convertible securities*

- 2 (1) Chapter 3 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: convertible securities) is amended as follows.
- (2) In section 438 (charge on occurrence of chargeable event), for subsections (1) to (4) substitute—
- “(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 439,
- (b) “the taxable amount” is the amount determined under section 440, and
- (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief may be available under section 442A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.”.
- (3) After section 442 insert—

**“442A Relief for secondary Class 1 contributions met by employee**

- (1) Relief is available under this section against an amount counting as employment income under section 438 (“the employment income amount”) if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
- (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1) (a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
- (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1) (b), has become the employee’s liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the gain is realised.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.

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- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by the Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).”.

#### Commencement Information

**I33** Sch. 16 para. 2 in force at 1.9.2004 by S.I. 2004/1945, art. 2

#### *Income tax relief: securities options*

- 3 (1) Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities options) is amended as follows.
- (2) In section 476 (charge on occurrence of chargeable event), for subsections (1) to (4) substitute—
- “(1) If a chargeable event occurs in relation to an employment-related securities option, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 477,
  - (b) “the taxable amount” is the amount determined under section 478, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee) may be available against an amount counting as employment income under this section.”.
- (3) In section 480 (deductible amounts), omit subsection (7).
- (4) In section 481 (deductible amount in respect of secondary Class 1 contributions met by employee)—
- (a) in the heading for “**Deductible amount in respect of**” substitute “**Relief for**”;
  - (b) in subsection (1) for the opening words down to “if” substitute “Relief is available under this section against an amount counting as employment income under section 476 if”;
  - (c) in subsection (2) for the opening words down to “of” substitute “The amount of the relief is the total of”;

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(d) after subsection (4) insert—

“(4A) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.

(4B) Relief under this section does not affect the amount to be taken into account—

- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
- (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.”.

(5) In section 482 (deductible amount in respect of special contribution met by employee)—

- (a) in the heading for “**Deductible amount in respect of**” substitute “**Relief for**”;
- (b) in subsection (1) for the opening words down to “if” substitute “Relief is available under this section against an amount counting as employment income under section 476 if”;
- (c) after subsection (5) add—

“(6) The amount of the relief is the amount of the liability referred to in subsection (4).

(“ Relief under this section is given by way of deduction from the amount otherwise counting as employment income.”.

#### Commencement Information

I34 Sch. 16 para. 3 in force at 1.9.2004 by S.I. 2004/1945, art. 2

#### Consequential amendments: PAYE

4 (1) Part 11 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (Pay As You Earn) is amended as follows.

(2) In section 698 (PAYE: special charges on employment-related securities), after subsection (2) insert—

“(2A) For the purposes of this section the amount likely to count as employment income under section 426 or 438 means the amount after deducting the amount of any relief likely to be available under section 428A or 442A (relief for secondary Class 1 contributions met by employee).”.

(3) In section 700 (PAYE: gains from securities options), after subsection (4) insert—

“(4A) For the purposes of this section the amount likely to count as employment income under section 476 means the amount after deducting the amount of any relief likely to be available under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee).”.

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#### Commencement Information

**I35** Sch. 16 para. 4 in force at 1.9.2004 by S.I. 2004/1945, art. 2

#### *Consequential amendments: corporation tax relief*

- 5 (1) Schedule 23 of the Finance Act 2003 (c. 14) (corporation tax relief for employee share acquisition) is amended as follows.
- (2) In paragraph 21(4) (amount of relief on acquisition of restricted shares)—
- (a) omit the words “increased by any amounts deducted under sections 481 and 482 of that Act”, and
  - (b) at the end add— “ No account shall be taken for this purpose of any relief under section 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee). ”.
- (3) In paragraph 21(6) (amount of relief on chargeable event in relation to restricted shares), at the end add— “ No account shall be taken for this purpose of any relief under section 428A of that Act (relief for secondary Class 1 contributions met by employee). ”.
- (4) In paragraph 22C(4) (amount of relief on acquisition of convertible shares)—
- (a) omit the words “increased by any amounts deducted under sections 481 and 482 of that Act”, and
  - (b) at the end add— “ No account shall be taken for this purpose of any relief under section 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee). ”.
- (5) In paragraph 22C(6) (amount of relief on chargeable event in relation to convertible shares), at the end add— “ No account shall be taken for this purpose of any relief under section 442A of that Act (relief for secondary Class 1 contributions met by employee). ”.
- (6) Nothing in this paragraph affects the operation of paragraph 21(4) or 22C(4) of Schedule 23 to the Finance Act 2003 in relation to amounts deducted under section 481 or 482 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) before the amendment of those paragraphs by this Schedule.

#### Commencement Information

**I36** Sch. 16 para. 5 in force at 1.9.2004 by S.I. 2004/1945, art. 2

#### *Consequential amendments: capital gains tax*

- 6 (1) Section 119A of the Taxation of Chargeable Gains Act 1992 (c. 12) (increase in expenditure by reference to tax charged in relation to employment-related securities) is amended as follows.
- (2) For subsection (5) (determination of relevant amount) substitute—
- “(5) In determining for the purposes of subsection (4) the amount counting as employment income—

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- (a) in the case of an amount counting as employment income under section 476 of ITEPA 2003 any amounts deducted under section 480(5)(a) or (b) of that Act shall be added back, and
- (b) no account shall be taken of any relief under section 428A, 442A, 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee).”.
- (3) Omit subsection (8).
- (4) Nothing in this paragraph affects the operation of section 119A(5) of the Taxation of Chargeable Gains Act 1992 (c. 12), as inserted by paragraph 50 (1) of Schedule 22 to the Finance Act 2003 (c. 14), in relation to amounts deducted under section 481 or 482 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) before the amendment of those sections by this Schedule.

#### Commencement Information

I37 Sch. 16 para. 6 in force at 1.9.2004 by S.I. 2004/1945, art. 2

#### *Other consequential amendments*

- 7 (1) In section 484(7) of the Income Tax (Earnings and Pensions) Act 2003 (definitions for Chapter 5 of Part 7), omit the definition of “the Contributions and Benefits Act” and the word “and” preceding it.
- (2) In section 721 (1) of that Act (general definitions), at the appropriate place insert—  
““the Contributions and Benefits Act” means SSCBA 1992 or SSCB(NI)A 1992;”.
- (3) In Part 2 of Schedule 1 to that Act (index of defined expressions), for the entry relating to “the Contributions and Benefits Act” substitute—

“the Contributions and Benefits Act                                      section 721(1)”

#### Commencement Information

I38 Sch. 16 para. 7 in force at 1.9.2004 by S.I. 2004/1945, art. 2

## SCHEDULE 17

Section 92

### MINOR AMENDMENTS OF OR CONNECTED WITH THE INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

#### *Free or subsidised meals*

- 1 (1) In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: miscellaneous exemptions), in section 317 (free or subsidised meals), for subsection (1) substitute—

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“(1) No liability to income tax arises in respect of the provision for an employee by the employer of free or subsidised meals if they are provided—

- (a) in a canteen, or
- (b) on the employer’s business premises,

and conditions A to C are met.”.

(2) This amendment has effect for the year 2004-05 and subsequent tax years.

*Payments to non-approved pension schemes: exception for  
employment where earnings not within main charging provisions*

2 (1) In Chapter 1 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (payments to non-approved pension schemes), for section 389 (exception: employments where earnings charged on remittance) substitute—

**“389 Exception: employment where earnings not within main charging provisions**

Section 386 does not apply if in the tax year in which the sum is paid the earnings from the employment are not (or would not have been if there were any) general earnings to which any of the following provisions applies—

- (a) section 15 (employee resident, ordinarily resident and domiciled in UK),
- (b) section 21 (employee resident and ordinarily resident, but not domiciled in UK),
- (c) section 25 (employee resident but not ordinarily resident in UK),
- (d) section 27 (UK-based earnings for year when employee not resident in UK).”.

(2) This amendment has effect for the year 2003-04 and subsequent tax years.

*Time limit for assessment: income received after year for which it is assessable*

3 (1) In Part 4 of the Taxes Management Act 1970 (c. 9) (assessments and claims), for section 35 (time limit for assessment: emoluments received after year for which they are assessable) substitute—

**“35 Time limit: income received after year for which it is assessable**

(1) Where income to which this section applies is received in a year of assessment subsequent to that for which it is assessable, an assessment to income tax as respects that income may be made at any time within six years after the year of assessment in which it was received.

- (2) This section applies to—
- (a) employment income,
  - (b) pension income, and
  - (c) social security income.”.

(2) This amendment has effect in relation to income assessable for the year 2004-05 and subsequent years of assessment.

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*Computation of profits or gains under Schedule D: delayed payment of remuneration*

- 4 (1) In section 43 of the Finance Act 1989 (c. 26) (Schedule D: computation)—
- (a) in subsection (1) for “profits or gains of a trade to be charged under Schedule D” substitute “ profits or gains to be charged under Schedule D ”, and
  - (b) in subsection (5) omit “of the trade”.
- (2) This amendment (which corrects an error in the amendment made by paragraph 157 of Schedule 6 to the Income Tax (Pensions and Earnings) Act 2003 (c. 1)) has effect—
- (a) for the purposes of income tax, for the year 2004-05 and subsequent years of assessment;
  - (b) for the purposes of corporation tax, for accounting periods ending after 5th April 2004.

*Donations to charity by individuals: application to Crown employment*

- 5 (1) In section 25(2) of the Finance Act 1990 (c. 29) (donations to charity by individuals: qualifying conditions), in paragraph (i)(i) for the words from “or performs duties” to “performed in the United Kingdom” substitute “ or is in Crown employment as defined in section 28(2) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (2) This amendment (which supersedes the amendment made by paragraph 166(3) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003) has effect for the year 2003-04 and subsequent years of assessment.

*Payments on account of income tax*

- 6 (1) Section 108 of the Finance Act 1995 (c. 4) shall be deemed not to have been repealed by Part 1 of Schedule 8 to the Income Tax (Earnings and Pensions) Act 2003 and the inclusion of that section among the enactments so repealed shall be deemed not to have affected the amendments made by that section in section 59A of the Taxes Management Act 1970 (c. 9) (payments on account of income tax).
- (2) Nothing in this paragraph affects anything done—
- (a) on or after 6th April 2003 (when the Income Tax (Earnings and Pensions) Act 2003 came into force), and
  - (b) before the passing of this Act,
- in reliance on the view that the amendments referred to in sub-paragraph (1) had ceased to have effect.

*Tax relief for expenditure on R&D or remediation of contaminated land: staff costs*

- 7 (1) In Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for expenditure on research and development), in paragraph 5 (staffing costs)—
- (a) in sub-paragraph (1), for paragraph (a) substitute—
    - “(a) the emoluments paid by the company to directors or employees of the company, including all salaries, wages, perquisites and profits whatsoever other than benefits in kind;” and
  - (b) omit sub-paragraph (1ZA).

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- (2) In Schedule 22 to the Finance Act 2001 (c. 9) (remediation of contaminated land), in paragraph 5 (employee costs)—
- (a) in sub-paragraph (1), for paragraph (a) substitute—
- “(a) the emoluments paid by the company to directors or employees of the company, including all salaries, wages, perquisites and profits whatsoever other than benefits in kind;”;
- (b) omit sub-paragraph (1A).
- (3) These amendments have effect in relation to expenditure incurred on or after 1st April 2004.

*Gains and losses of a company from intangible fixed assets: delayed payment of remuneration*

- 8 (1) In Schedule 29 to the Finance Act 2002 (c. 23) (gains and losses of a company from intangible fixed assets), paragraph 113 (delayed payments of emolument) is amended as follows.
- (2) In the heading, for “emoluments” substitute “ employees' remuneration ”.
- (3) In sub-paragraph (1)—
- (a) in paragraph (a), for “emoluments” substitute “ employees' remuneration ”,
- (b) in paragraph (b), for “emoluments are” substitute “ remuneration is ”, and
- (c) for “emoluments shall” substitute “ remuneration shall ”.
- (4) For sub-paragraph (2) substitute—
- “(2) Sub-paragraph (1) applies whether the amount is in respect of particular employments or in respect of employments generally.”.
- (5) For sub-paragraph (3) substitute—
- “(3) This paragraph applies to potential employees' remuneration as it applies to employees' remuneration.
- For this purpose—
- (a) potential employees' remuneration is an amount reserved in the accounts of an employer, with a view to it becoming employees' remuneration, and
- (b) potential employees' remuneration is regarded as paid when it becomes employees' remuneration that is paid.”.
- (6) In sub-paragraph (5)—
- (a) for “emoluments have not” substitute “ employees' remuneration has not ”,
- (b) in paragraph (a), for “they” substitute “ it ”, and
- (c) in paragraph (b), for “emoluments are” substitute “ remuneration is ”.
- (7) After that sub-paragraph insert—
- “(6) For the purposes of this section remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
- (b) would be so treated if it were not exempt income.



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(7) In this paragraph—

“employee” includes an office-holder and “employment” correspondingly includes an office, and

“remuneration” means an amount which is or is treated as earnings for the purposes of the Income Tax (Earnings and Pensions) Act 2003.”.

(8) These amendments have effect for accounting periods ending after 5th April 2003.

*Minor corrections of the Income Tax (Earnings and Pensions) Act 2003*

- 9
- (1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
  - (2) In section 286 (power to amend sections 279 to 285), in the heading and in subsection (1), for “279” substitute “ 277 ”.
  - (3) In Chapter 11 of Part 7 (supplementary provisions about employee benefit trusts), in section 554(1)(a) (attribution of further interest in company), for “employment” substitute “ employee ”.
  - (4) In section 577 (United Kingdom social security pensions)—
    - (a) in subsection (2), in paragraph (b) of the definition of “state pension”, for “48” substitute “ 48A ”, and
    - (b) omit subsection (3).
  - (5) In section 677 (UK social security benefits wholly exempt from income tax), in Part 2 of Table B (benefits payable under regulations), omit the entry relating to compensation payments where child support reduced because of a change in legislation.

*Other minor corrections*

- 10 <sup>F52</sup>(1) .....
- (2) In section 336 of the Taxes Act 1988 (temporary residents in the United Kingdom) for “Cases I, II and III of Schedule E” substitute “ determining taxable earnings from an employment under Chapters 4 and 5 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: charge to tax) ”.
  - (3) In section 38(9) of the Finance Act 1988 (c. 39) (maintenance payments under existing obligations: 1989-90 onwards)—
    - (a) for “68(1)(b) or 192(3)” substitute “ or 68(1)(b) ”, and
    - (b) after “Taxes Act 1988” insert “ or section 355 of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (4) In section 76 of the Finance Act 1989 (c. 26) (non-approved retirement benefits schemes)—
    - (a) in subsection (3)(b) and (6)(b), for the words from “is treated” to the end substitute “ counts as employment income of a person by virtue of section 386 (1) of the Income Tax (Earnings and Pensions) Act 2003 (charge on payments to non-approved retirement benefit schemes) ”, and
    - (b) in subsection (6D)(a) for “employer” substitute “ employee ”.

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### Textual Amendments

- F52** Sch. 17 para. 10(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

## SCHEDULE 18

Section 93

### ENTERPRISE INVESTMENT SCHEME

#### PART 1

##### INCOME TAX RELIEF

- 1 (1) Section 289 of the Taxes Act 1988 (eligibility for income tax relief) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit “wholly in cash”,
  - (b) after that paragraph insert—
    - “(aza) he subscribed for the shares (other than any of them which are bonus shares) wholly in cash”,
  - (c) in paragraph (aa), for the words from “are fully” to “future date)” substitute “(other than any of them which are bonus shares) are fully paid up”,
  - (d) in paragraph (b), for “and all other shares comprised in the same issue” substitute “(other than any of them which are bonus shares)”,
  - (e) for paragraph (c) substitute—
    - “(c) at least 80 per cent. of the money raised by the issue of—
      - (i) the shares, and
      - (ii) all other eligible shares (if any) in the company of the same class which are issued on the same day,
 is employed wholly for the purpose of the activity mentioned in paragraph (b) above not later than the time mentioned in subsection (3) below, and”.
- (3) For subsections (1A) to (1D) substitute—
- “(1A) The requirements of this subsection are satisfied in relation to the qualifying company if at no time in the relevant period is any of the following, namely—
- (a) the relevant qualifying trade,
  - (b) relevant preparation work (if any), and
  - (c) relevant research and development (if any),
- being carried on by a person other than the qualifying company or a qualifying 90% subsidiary of that company.
- (1B) In a case where relevant preparation work is carried on by the qualifying company or a qualifying 90% subsidiary of that company, there is to be disregarded, for the purpose of determining whether the requirements of

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subsection (1A) above are satisfied in relation to the qualifying company, the carrying on of the relevant qualifying trade by a company other than—

- (a) the qualifying company, or
- (b) a subsidiary of that company,

at any time in the relevant period before the qualifying company or any qualifying 90% subsidiary of that company carries on that trade.

(1C) The requirements of subsection (1A) above are not to be regarded as failing to be satisfied in relation to the qualifying company if—

- (a) by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership, or
- (b) by reason only of the qualifying company or any other company being wound up or dissolved without winding up,

the relevant qualifying trade ceases to be carried on in the relevant period by the qualifying company or any qualifying 90% subsidiary of that company and is subsequently carried on in that period by a person who is not at any time in the period of restriction connected with the qualifying company.

(1D) Subsection (1C) above applies only if (as the case may be)—

- (a) the entry into administration or receivership and everything done as a consequence of the company concerned being in administration or receivership, or
- (b) the winding up or dissolution,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.

(1E) In this section—

“relevant preparation work” means preparations falling within subsection (2) (a)(ii) below which are the subject of the qualifying business activity mentioned in subsection (1) above,

“the relevant qualifying trade” means the qualifying trade which is the subject of that qualifying business activity,

“relevant research and development” means—

- (a) research and development falling within subsection (2)(b) below which is the subject of that qualifying business activity, and
- (b) any other preparations for the carrying on of the qualifying trade which is the subject of that activity.”.

(4) In subsection (2)—

- (a) in paragraph (a), for “subsidiary” substitute “ qualifying 90% subsidiary of that company ”,
- (b) in paragraph (a)(i), for “it” substitute “ the company or any such subsidiary ”,
- (c) in paragraph (a)(ii)—
  - (i) for “preparing to carry on” substitute “ preparing to carry on, or carrying on, ”,
  - (ii) for “it intends to carry” substitute “ is intended to be carried ”,

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- (iii) for “and which it begins to carry on” substitute “ by the company or any such subsidiary and which is begun to be carried on by the company or any such subsidiary ”,
- (d) in the full-out words at the end of paragraph (a), for “trade is” substitute “ trade is so ”,
- (e) in paragraph (b)—
  - (i) for “subsidiary”, in the first place, substitute “ qualifying 90% subsidiary of that company ”,
  - (ii) in sub-paragraph (i), for “it is carrying on or which it” substitute “ the company or any such subsidiary is carrying on or which the company or any such subsidiary ”,
  - (iii) in sub-paragraph (ii), for “subsidiary” substitute “ such subsidiary ”.
- (5) In subsection (3)(b), for “subsidiary concerned” substitute “ a qualifying 90% subsidiary of that company ”.
- (6) After subsection (3) insert—
 

“(3A) In determining—

  - (a) for the purposes of subsection (2)(a)(ii) or (3)(b) above when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, or
  - (b) for the purposes of subsection (2)(b)(i) above when research and development is begun to be carried on by such a subsidiary of a company,

there shall be disregarded any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary of the company.”.
- (7) After subsection (8) insert—
 

“(8A) Shares are not fully paid up for the purposes of subsection (1)(aa) above if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.”.
- (8) For subsection (9) substitute—
 

“(9) For the purposes of this Chapter, a company (“the relevant subsidiary”) is a qualifying 90% subsidiary of another company (“the holding company”) if the following conditions are met—

  - (a) the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the relevant subsidiary;
  - (b) the holding company would—
    - (i) in the event of a winding up of the relevant subsidiary, or
    - (ii) in any other circumstances,

be beneficially entitled to receive not less than 90% of the assets of the relevant subsidiary which would then be available for distribution to the equity holders of the subsidiary;
  - (c) the holding company is beneficially entitled to not less than 90% of any profits of the relevant subsidiary which are available for distribution to the equity holders of the subsidiary;

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- (d) no person other than the holding company has control of the relevant subsidiary within the meaning of section 840; and
    - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) above would cease to be met.
  - (10) Subsections (3), (3A) and (4) of section 308 apply in relation to the conditions in subsection (9) above as they apply in relation to the conditions in subsection (2) of that section, but with the following modifications.
  - (11) Those modifications are—
    - (a) that references in subsections (3), (3A) and (4) of that section to the subsidiary are to be read as references to the relevant subsidiary, and
    - (b) that subsection (4) of that section is to be read as if the words “ the holding company ” were substituted for the words “the qualifying company or (as the case may be) by another subsidiary”.
  - (12) For the purposes of subsection (9) above—
    - (a) the persons who are equity holders of the relevant subsidiary, and
    - (b) the percentage of the assets of the relevant subsidiary to which an equity holder would be entitled,are to be determined in accordance with paragraphs 1 and 3 of Schedule 18.
  - (13) But in making that determination—
    - (a) references in paragraph 3 of Schedule 18 to the first company are to be read as references to an equity holder, and
    - (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the relevant subsidiary are available for distribution to its equity holders.”.
- 2 (1) Section 289A of the Taxes Act 1988 (form of relief) is amended as follows.
- (2) In subsection (6), for the words from “A claim” to “below is complied with” substitute “ A claim for relief in respect of eligible shares issued by a company shall not be allowed unless subsection (7) below is complied with in relation to the issue of shares in question ”.
- (3) In subsection (7)—
  - (a) in paragraph (a)—
    - (i) for “the case of shares issued” substitute “ a case where the money raised by an issue of eligible shares is raised wholly ”,
    - (ii) for “company or subsidiary concerned has carried on the trade for four months” substitute “ trade concerned has been carried on for four months by no person other than the qualifying company or a qualifying 90% subsidiary of that company ”,
  - (b) in paragraph (b)—
    - (i) for “the case of shares issued” substitute “ a case where the money raised by an issue of eligible shares is raised wholly or partly ”,
    - (ii) for the words from “or within” to the end substitute “ the research and development concerned has been carried on for four months by no person other than the qualifying company or a qualifying 90% subsidiary of that company ”.

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- (4) In subsection (8)—
- (a) for paragraph (a) substitute—
    - “(a) by reason only of the qualifying company or any other company being wound up or dissolved without winding up—
      - (i) the trade concerned is carried on as mentioned in subsection (7)(a) above, or
      - (ii) the research and development concerned is carried on as mentioned in subsection (7)(b) above, for a period shorter than four months, and”,
  - (b) in paragraph (b)—
    - (i) omit “it is shown that”,
    - (ii) for “was for” substitute “ is for ”,
    - (iii) for “not as” substitute “ is not ”,
    - (iv) for “which was” substitute “ which is ”,
  - (c) in the full-out words at the end, after “(7)(a)” insert “ or, as the case may be, (7)(b) ”.
- (5) In subsection (8A)—
- (a) for the words from “Where” to “shorter period.” substitute—
 

“Where, by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership—

    - (a) the trade concerned is carried on as mentioned in subsection (7)(a) above for a period shorter than four months, or
    - (b) the research and development concerned is carried on as mentioned in subsection (7)(b) above for a period shorter than four months,

subsection (7)(a) or, as the case may be, (7)(b) above shall have effect as if it referred to that shorter period. ”,
  - (b) in paragraph (b), after “company” insert “ concerned ”.
- 3 In section 289B of the Taxes Act 1988 (attribution of relief to shares) in subsection (4), for “same day” substitute “ same day, but this subsection does not apply in relation to section 289A(6) and (7) ”.
- 4 (1) In section 290(2) of the Taxes Act 1988 (maximum subscriptions) for “£150,000” substitute “ £200,000 ”.
- (2) The amendment made by this paragraph has effect for the year 2004-2005 and subsequent years of assessment.
- 5 (1) Section 293 of the Taxes Act 1988 (qualifying companies) is amended as follows.
- (2) In subsection (4A)—
- (a) omit “which is in administration or receivership”,
  - (b) after “by reason” insert “ only ”,
  - (c) for “its” substitute “ the company, or any of its subsidiaries, ”.

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- (3) In subsection (4B)(b), after “company” insert “concerned”.
- (4) In subsection (5)—
  - (a) after “winding up of the company” insert “or any of its subsidiaries”,
  - (b) after “or the company” insert “or any of its subsidiaries”.
- (5) In subsection (6)—
  - (a) for “by reason of” substitute “by reason only of the company or any of its subsidiaries”,
  - (b) in paragraph (a), for “and not” substitute “and is not”.
- (6) After subsection (6) insert—
  - “(6ZA) The company must not at any time in the relevant period have a property managing subsidiary which is not a qualifying 90% subsidiary of the company.
  - (6ZB) “Property managing subsidiary” means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
  - (6ZC) In subsection (6ZB) above, “land” and “property deriving its value from land” have the same meaning as in section 776.”.
- 6 (1) In section 300 of the Taxes Act 1988 (value received from company) for subsection (2)(b) substitute—
  - “(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which the relief is claimed, any debt owed to the individual other than a debt which was incurred by the company—
    - (a) on or after the date of issue of those shares; and
    - (b) otherwise than in consideration of the extinguishment of a debt incurred before that date;”.
  - (2) Subject to sub-paragraph (3), the amendment made by this paragraph has effect in relation to shares issued on or after 17th March 2004.
  - (3) The amendment made by this paragraph does not have effect in relation to the repayment of a debt incurred before 17th March 2004 if—
    - (a) the shares were subscribed for before that date, and
    - (b) the debt was incurred on or after the date on which the shares were subscribed for.
- 7 (1) In section 303 of the Taxes Act 1988 (value received by persons other than claimants) in subsection (9A), for “section 303AA” substitute “sections 303AA and 303A”.
- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of section 303A of the Taxes Act 1988) made on or after 17th March 2004.
- 8 (1) In section 303A of the Taxes Act 1988 (restriction on withdrawal of relief under section 303) in subsection (6), omit paragraph (a).

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- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of section 303A of the Taxes Act 1988) made on or after 17th March 2004.
- 9 In section 308 of the Taxes Act 1988 (application to subsidiaries)—
- (a) in subsection (1)(a), omit the words from “and, except” to “relevant period”,
  - (b) in subsection (2)—
    - (i) omit paragraphs (a) to (c),
    - (ii) before paragraph (d) insert—
      - “(ca) that more than 50 per cent. of the ordinary share capital of the subsidiary is owned directly or indirectly by the qualifying company;”,
    - (iii) in paragraph (e), for “the conditions in paragraphs (a) to” substitute “either of the conditions in paragraphs (ca) and”, and for “could” substitute “would”,
  - (c) in the opening words of subsection (3), for “the qualifying company” substitute “any other company”,
  - (d) in subsection (3)(a)—
    - (i) omit “it is shown that”,
    - (ii) for “and not” substitute “and is not”,
  - (e) omit subsection (3)(b) and the word “and” immediately preceding it,
  - (f) after subsection (3) insert—
 

“(3A) The conditions shall not be regarded as ceasing to be satisfied by reason only of anything done as a consequence of the subsidiary or any other company being in administration or receivership if—

    - (a) the entry into administration or receivership, and
    - (b) everything done as a consequence of the company concerned being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.”,
  - (g) in subsection (4)—
    - (i) after “only of” insert “arrangements being in existence for”,
    - (ii) omit “within the relevant period”,
    - (iii) omit “it is shown that”,
    - (iv) after “disposal is” insert “to be”,
    - (v) for “and not” substitute “and is not to be”,
  - (h) omit subsection (5),
  - (i) after subsection (5A) insert—
 

“(5B) Subsections (2) to (10) of section 838 apply for the purposes of subsection (2)(ca) above as they apply for the purposes of subsection (1) of that section.”.
- 10 (1) In section 310 of the Taxes Act 1988 (information)—
- (a) in subsection (5)—
    - (i) for “289(6),” substitute “289(1D), (6) or (9)(e), 289A(8)(b) or (8A),”,



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- (ii) for “293(8),” substitute “ 293(4B), (6) or (8), ”,
      - (iii) for “or 308(2)(e)” substitute “ or 308(2)(e), (3), (3A) or (4) ”,
    - (b) in subsection (6)—
      - (i) in paragraph (a), after “289(6)” insert “ or 293(4B) or (6) ”,
      - (ii) after paragraph (a) insert—
        - “(aa) in relation to section 289(1D), 289A(8)(b) or (8A) or 308(3), (3A) or (4), the claimant, the company, any other company in question and any person controlling the company or any other company in question;”,
      - (iii) in paragraph (c), after “section” insert “ 289(9)(e), ”,
    - (c) after subsection (6) insert—
      - “(6A) The references in subsections (5) and (6) above to subsections (3), (3A) and (4) of section 308 are to be read as including those provisions as applied by section 289(10) and (11).”.
  - (2) The amendments made by this paragraph have effect in relation to any notice given after the passing of this Act in respect of shares issued on or after 17th March 2004.
- 11 (1) Section 312 of the Taxes Act 1988 (interpretation) is amended as follows.
- (2) In subsection (1)—
    - (a) before the definition of “control” insert—
      - ““bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);”,
    - (b) in the definition of “control” after “sections” insert “ 289(9), ”,
    - (c) after the definition of “research and development” insert—
      - ““qualifying 90% subsidiary”, in relation to any company, is to be construed in accordance with section 289(9) to (13);”,
    - (d) in the definition of “termination date”—
      - (i) in paragraph (a), for “the shares were issued wholly or mainly in order to raise money” substitute “ the money raised by the issue was raised wholly or mainly ”,
      - (ii) in paragraph (a), for “subsidiary” substitute “ qualifying 90% subsidiary of the company ”,
      - (iii) in paragraph (b), for “the company or subsidiary concerned had not” substitute “ neither the company nor any of its qualifying 90% subsidiaries had ”,
      - (iv) in the full-out words at the end, for “it” substitute “ the company or any qualifying 90% subsidiary of the company ”.
  - (3) After subsection (1A) insert—
    - “(1ZA) In determining, for the purposes of the definition of “termination date” in subsection (1) above, when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary of the company.”.

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## PART 2

### DEFERRAL RELIEF

- 12 Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) (enterprise investment scheme: re-investment) is amended as follows.
- 13 (1) In paragraph 1(2) (definition of qualifying investment)—
- (a) in paragraph (a), omit “wholly in cash”,
  - (b) after that paragraph insert—
    - “(aza) he subscribed for the shares (other than any of them which are bonus shares) wholly in cash,”,
  - (c) in paragraph (c), for the words from “are fully” to “future date” substitute “(other than any of them which are bonus shares) are fully paid up”,
  - (d) in paragraph (e), after “Act” insert “(read with section 289(1B) to (1E) of that Act)”,
  - (e) in paragraph (f), for “all the shares comprised in the issue” substitute “the shares (other than any of them which are bonus shares)”,
  - (f) for paragraph (g) substitute—
    - “(g) at least 80 per cent. of the money raised by the issue of—
      - (i) the shares, and
      - (ii) all other eligible shares (if any) in the company of the same class which are issued on the same day,
 is employed wholly for the purpose of that activity not later than the time mentioned in section 289(3) of the Taxes Act, and”.
- (2) After paragraph 1(4) of that paragraph insert—
- “(5) Shares are not fully paid up for the purposes of sub-paragraph (2)(c) above if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.”.
- 14 In paragraph 1A (failure of conditions of application)—
- (a) in sub-paragraph (1), after “the shares” insert “mentioned in sub-paragraph (2)(a) of that paragraph”,
  - (b) in sub-paragraph (2), after “the shares” insert “mentioned in sub-paragraph (2)(a) of that paragraph”,
  - (c) in sub-paragraph (3), for “an issue of eligible shares,” substitute “the shares mentioned in sub-paragraph (2)(a) of that paragraph”,
  - (d) in sub-paragraph (4), for “an issue of eligible shares, the shares” substitute “the issue of eligible shares, the shares mentioned in sub-paragraph (2)(a) of that paragraph”,
  - (e) in sub-paragraph (5)(b), after “the shares” insert “mentioned in paragraph 1(2)(a) above”.
- 15 (1) In paragraph 10 (re-investment in same company, etc)—
- (a) in sub-paragraph (1), for “other securities” substitute “securities”,
  - (b) after sub-paragraph (3) insert—
    - “(4) In this paragraph “group of companies” means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries.”.

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- (2) The amendments made by this paragraph have effect, for the purposes of paragraph 10 (1) of Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12), in relation to holdings of shares or securities disposed of on or after 17th March 2004.
- (3) The amendment made by sub-paragraph (1)(b) has effect, for the purposes of paragraph 10(2) of that Schedule, in relation to eligible shares in a relevant company issued on or after 17th March 2004.
- 16 (1) In paragraph 13 (value received by investor) in sub-paragraph (2)(b)(i), for “on which he subscribed for the shares” substitute “ of issue of the shares ”.
- (2) Subject to sub-paragraph (3), the amendment made by this paragraph has effect in relation to shares issued on or after 17th March 2004.
- (3) The amendment made by this paragraph does not have effect in relation to the repayment of a debt incurred before 17th March 2004 if—
- (a) the shares were subscribed for before that date, and
  - (b) the debt was incurred on or after the date on which the shares were subscribed for.
- 17 (1) In paragraph 14 (value received by other persons) in sub-paragraph (7), for “paragraph 14AA” substitute “ paragraphs 14AA and 14A ”.
- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12)) made on or after 17th March 2004.
- 18 (1) In paragraph 14A (certain receipts to be disregarded for the purposes of paragraph 14) in sub-paragraph (6), omit paragraph (a).
- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992) made on or after 17th March 2004.
- 19 (1) In paragraph 16 (information)—
- (a) in sub-paragraph (6), for “293(8) or 308(2)(e)” substitute “ 289(1D) or (9) (e), 289A(8)(b) or (8A), 293(4B), (6) or (8) or 308(2)(e), (3), (3A) or (4) ”,
  - (b) in sub-paragraph (7)—
    - (i) in paragraph (a), after “above” insert “ or section 293(4B) or (6) of the Taxes Act ”,
    - (ii) after paragraph (a) insert—
      - “(aa) in relation to section 289(1D), 289A(8)(b) or (8A) or 308(3), (3A) or (4) of the Taxes Act, the claimant, the company, any other company in question and any person controlling the company or any other company in question;”,
    - (iii) in paragraph (c), after “section” insert “ 289(9)(e), ”,
    - (iv) in the full-out words at the end, for “(a)” substitute “ (a), (aa) ”,
  - (c) after sub-paragraph (7) insert—
    - “(7A) The references in sub-paragraphs (6) and (7) above to subsections (3), (3A) and (4) of section 308 of the Taxes Act are to be read as including those provisions as applied by section 289(10) and (11) of that Act.”.

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- (2) The amendments made by this paragraph have effect in relation to any notice given after the passing of this Act in respect of shares issued on or after 17th March 2004.
- 20 (1) In paragraph 19 (1) (interpretation)—
  - (a) before the definition of “arrangements” insert—
    - ““51 per cent. subsidiary” has the meaning given by section 838 of the Taxes Act;”,
  - (b) after the definition of “associate” insert—
    - ““bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);”.
- (2) The amendment made by sub-paragraph (1)(a) has effect in relation to shares issued on or after 17th March 2004, except that, for the purposes of the amendment made by sub-paragraph (1)(b) of paragraph 15 of this Schedule, it has effect in accordance with sub-paragraphs (2) and (3) of that paragraph.

**PART 3**

COMMENCEMENT

- 21 Except where otherwise provided, the amendments made by this Schedule have effect in relation to shares issued on or after 17th March 2004.

SCHEDULE 19

Section 94

VENTURE CAPITAL TRUSTS

**PART 1**

INCREASE IN RELIEF ON INVESTMENTS AND DISTRIBUTIONS

- 1 In paragraph 1(3) of Schedule 15B to the Taxes Act 1988 (maximum amount in respect of which claim for income tax relief may be made) for “£100,000” substitute “£200,000”.

<sup>F53</sup>2 .....

**Textual Amendments**  
**F53** Sch. 19 para. 2 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with Sch. 2)

- 3 The amendments made by this Part have effect for the year 2004-05 and subsequent years of assessment.

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## PART 2

### ABOLITION OF DEFERRAL RELIEF

#### *Main amendments*

- 4 Section 151A(3) of the Taxation of Chargeable Gains Act 1992 (c. 12) (which introduces Schedule 5C) shall cease to have effect.
- 5 Schedule 5C to that Act (venture capital trusts: deferred charge on re-investment) shall cease to have effect.

#### *Consequential amendment*

- 6 (1) The Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 2(4) of Schedule 5B (enterprise investment scheme: re-investment) omit “or Schedule 5C”.

#### *Commencement*

- 7 (1) The amendments made by this Part have effect in relation to shares issued on or after 6th April 2004 which are shares by reference to which an individual is given relief under Part 1 of Schedule 15B to the Taxes Act 1988.
- (2) But nothing in this Act affects the continuing operation of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12) for the purposes of section 151B(8)(b)(ii) of that Act.

## PART 3

### MISCELLANEOUS

- 8 Schedule 28B to the Taxes Act 1988 (venture capital trusts: meaning of “qualifying holdings”) is amended as follows.
- 9 In paragraph 3 (requirement as to company’s business)—
- (a) in sub-paragraph (3)—
- (i) for the words from “the relevant company” to “all times since,” substitute “ when the relevant holding was issued and at all times since, a qualifying company (whether or not the same such company at every such time) must ”,
- (ii) in paragraph (b)—
- (a) for “it intended to carry” substitute “ was intended to be carried ”,
- (b) after “Kingdom” insert “ by a qualifying company ”,
- (iii) omit the words from “and for the purposes” to the end,
- (b) in sub-paragraph (4)—
- (i) in paragraph (a), for the words from “the relevant company” to “intended trade” substitute “ the intended trade was begun to be carried on by a qualifying company ”,

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- (ii) in paragraph (b), for the words from “that company” to “that period,” substitute “ at all times since the end of that period, a qualifying company (whether or not the same such company at every such time) has ”,
- (c) after sub-paragraph (5) insert—

“(5A) In sub-paragraphs (3) and (4) above, “qualifying company” means the relevant company or any relevant qualifying subsidiary of that company.

(5B) In determining for the purposes of sub-paragraph (4)(a) above when the intended trade was begun to be carried on by a qualifying company which is a relevant qualifying subsidiary of the relevant company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary of the relevant company.”.

10 After paragraph 5 insert—

*“Meaning of “relevant qualifying subsidiary”*

- 5A (1) For the purposes of this Schedule, a company (“the subsidiary”) is a relevant qualifying subsidiary of the relevant company at any time when it falls within sub-paragraph (2) below.
- (2) The subsidiary falls within this sub-paragraph if—
- (a) the relevant company possesses not less than 90 per cent. of the issued share capital of, and not less than 90 per cent. of the voting power in, the subsidiary;
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,
 be beneficially entitled to receive not less than 90 per cent. of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary;
  - (c) the relevant company is beneficially entitled to not less than 90 per cent. of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary;
  - (d) no person other than the relevant company has control of the subsidiary within the meaning of section 840; and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) above would cease to be met.
- (3) Sub-paragraphs (4) to (4C) and (5) of paragraph 10 below apply in relation to sub-paragraph (2) of this paragraph as they apply in relation to sub-paragraph (3) of that paragraph, but with the following modification.
- (4) That modification is that sub-paragraph (5) of that paragraph is to be read as if the words “or (as the case may be) by another subsidiary of that company” were omitted.
- (5) For the purposes of this paragraph—
- (a) the persons who are equity holders of the subsidiary, and

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(b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,  
shall be determined in accordance with paragraphs 1 and 3 of Schedule 18.

(6) But in making that determination—

- (a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and
- (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.”.

11 In paragraph 6 (requirements as to the money raised by the investment in question)

- (a) in sub-paragraph (1)(a)(ii), for the words from “the relevant company” to “employed” substitute “ is intended to be employed ”,
- (b) in sub-paragraph (2AA)(b), for the words from “the relevant company” to the end substitute “ the condition in paragraph 3(4)(a) above was satisfied ”,
- (c) for sub-paragraphs (2A) to (2C) substitute—

“(2AB) The requirements of this paragraph are not satisfied if either of the following, namely—

- (a) the trade by reference to which the requirements of paragraph 3(3) above are satisfied, and
- (b) any preparations for that trade falling within paragraph 3(3)(b) above,

are carried on, at any time after the issue of the relevant holding, by a person other than the relevant company or a relevant qualifying subsidiary of that company.

(2AC) Sub-paragraph (2AD) below applies where preparations mentioned in sub-paragraph (2AB)(b) above are carried on by the relevant company or a relevant qualifying subsidiary of that company at any time after the issue of the relevant holding.

(2AD) Where this sub-paragraph applies, the requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied by reason only of the carrying on of the trade mentioned in sub-paragraph (2AB)(a) above by a person other than—

- (a) the relevant company, or
- (b) a qualifying subsidiary of that company,

at any time after the issue of the relevant holding but before the relevant company or any relevant qualifying subsidiary of that company carries on that trade.

(2AE) The requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied by reason only of the carrying on of the trade mentioned in sub-paragraph (2AB)(a) above—

- (a) by the partners in a partnership of which the relevant company, or a relevant qualifying subsidiary of that company, is a member, or

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- (b) by the parties to a joint venture to which the relevant company, or a relevant qualifying subsidiary of that company, is a party.

(2AF) The requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied if—

- (a) by reason only of anything done as a consequence of the relevant company or any other company being in administration or receivership, or
- (b) by reason only of the relevant company or any other company being wound up or dissolved without winding up,

the trade mentioned in sub-paragraph (2AB)(a) above ceases to be carried on by the relevant company or a relevant qualifying subsidiary of that company and is subsequently carried on by a person who has not been connected, at any time after the date which is one year before the issue of the relevant holding, with the relevant company.

(2AG) Sub-paragraph (2AF) above applies only if (as the case may be)—

- (a) the entry into administration or receivership and everything done as a consequence of the company concerned being in administration or receivership, or
- (b) the winding up or dissolution,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.

(2AH) Sub-paragraph (2) of paragraph 11A below applies for the purposes of sub-paragraphs (2AF) and (2AG) above as it applies for the purpose of that paragraph.”

- (d) omit sub-paragraph (5).

12 In paragraph 10 (meaning of “qualifying subsidiary”)—

- (a) omit sub-paragraph (3)(a) to (c),
- (b) before sub-paragraph (3)(d) insert—
  - “(ca) the subsidiary is a 51 per cent. subsidiary of the relevant company;”,
- (c) in sub-paragraph (3)(e), for “the relevant company could cease to fall within this sub-paragraph” substitute “ either of the conditions in paragraphs (ca) and (d) above would cease to be met ”,
- (d) in sub-paragraph (4)—
  - (i) after “time when it” insert “ or any other company ”,
  - (ii) omit “it is shown”,
  - (iii) omit the first “that” in paragraph (a),
  - (iv) omit “that” in paragraph (b),
  - (v) for “and not” substitute “ and is not ”,
- (e) after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4B) below applies at a time when the subsidiary or any other company is in administration or receivership.



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- (4B) The subsidiary shall not be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company falling within sub-paragraph (3) above if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company concerned being in administration or receivership,
- is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.
- (4C) Sub-paragraph (2) of paragraph 11A below applies for the purposes of sub-paragraphs (4A) and (4B) above as it applies for the purpose of that paragraph.”,
- (f) in sub-paragraph (5)—
    - (i) omit the words “it is shown that”,
    - (ii) for “and not” substitute “ and is not to be ”,
  - (g) omit sub-paragraph (6).
- 13 After paragraph 10 insert—
- “Requirement as to property managing subsidiaries*
- 10ZA1) The requirement of this paragraph is that the relevant company must not have a property managing subsidiary which is not a relevant qualifying subsidiary of the relevant company.
- (2) “Property managing subsidiary” means a qualifying subsidiary of the relevant company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
  - (3) In sub-paragraph (2) above, “land” and “property deriving its value from land” have the same meaning as in section 776.”.
- 14 In paragraph 11 (winding up of the relevant company)—
- (a) omit “it is shown”,
  - (b) omit the first “that” in paragraph (a),
  - (c) omit “that” in paragraph (b),
  - (d) in paragraph (b), for “and not” substitute “ and is not ”.
- 15 In paragraph 11A (company in administration or receivership) in sub-paragraph (1), after “by reason” insert “ only ”.
- 16 The amendments made by this Part have effect for the purpose of determining whether shares or securities issued on or after 17th March 2004 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company’s qualifying holdings.

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## SCHEDULE 20

Section 95

## CORPORATE VENTURING SCHEME

- 1 Schedule 15 to the Finance Act 2000 (c. 17) (the corporate venturing scheme) is amended as follows.
- 2 In paragraph 3 (meaning of “the qualification period”)—
- (a) in sub-paragraph (1)(b)(ii), and
  - (b) in sub-paragraph (2)(a) and (b),
- for “qualifying subsidiaries” substitute “qualifying 90% subsidiaries”.
- 3 In paragraph 15 (introduction) after paragraph (e) insert—
- “(ea) property managing subsidiaries (see paragraph 21A);”.
- 4 In paragraph 20 (the qualifying subsidiaries requirement) for sub-paragraph (2) substitute—
- “(2) In this paragraph “subsidiary” means any company which the company controls, either on its own or together with any person connected with it.
- (3) For the purpose of sub-paragraph (2), the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.”.
- 5 (1) Paragraph 21 (meaning of “qualifying subsidiary”) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) omit paragraphs (a) to (c),
  - (b) before paragraph (d) insert—
- “(ca) the subsidiary is a 51% subsidiary of the relevant company;”,
- (c) in paragraph (e) for “the conditions in paragraphs (a) to” substitute “either of the conditions in paragraphs (ca) and”.
- (3) In sub-paragraph (4)(a)(ii), after “company” insert “concerned”.
- (4) In sub-paragraph (5)—
- (a) after “qualifying subsidiary” insert “of the relevant company”.
  - (b) for “and not part” substitute “and is not to be part”.
- 6 After paragraph 21 insert—

*“The property managing subsidiaries requirement*

- 21A(1) The issuing company is not a qualifying issuing company in relation to the relevant shares if, at any time during the qualification period relating to those shares, it has a property managing subsidiary which is not a qualifying 90% subsidiary of the issuing company (see paragraph 23(10) and (11)).
- (2) “Property managing subsidiary” means a qualifying subsidiary of the issuing company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In sub-paragraph (2), “land” and “property deriving its value from land” have the same meaning as in section 776 of the Taxes Act 1988.”.

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- 7 In paragraph 23 (the trading activities requirement)—
- (a) in sub-paragraph (3)(b), for “at least one group company” substitute “ the issuing company or a qualifying 90% subsidiary of the issuing company ”,
  - (b) in sub-paragraph (5)—
    - (i) for “a subsidiary” substitute “ a qualifying 90% subsidiary of the issuing company ”,
    - (ii) for “or subsidiary” substitute “ or a qualifying 90% subsidiary of the issuing company ”,
  - (c) in sub-paragraph (6), for “the company”, in the first place, substitute “ a company ”,
  - (d) after sub-paragraph (9) insert—
    - “(10) For the purposes of this Schedule, a company (“the subsidiary”) is a qualifying 90% subsidiary of the issuing company if the following conditions are met—
      - (a) the issuing company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;
      - (b) the issuing company would—
        - (i) in the event of a winding up of the subsidiary, or
        - (ii) in any other circumstances,be beneficially entitled to receive not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
      - (c) the issuing company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
      - (d) no person other than the issuing company has control of the subsidiary within the meaning of section 840 of the Taxes Act 1988; and
      - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
    - (11) For the purposes of sub-paragraph (10)—
      - (a) sub-paragraphs (3) and (4) of paragraph 21 apply in relation to the conditions in sub-paragraph (10) as they apply in relation to the conditions in paragraph 21(2), and
      - (b) the subsidiary shall not be regarded, at any time when arrangements are in existence for the disposal by the issuing company of all its interest in the subsidiary, as having ceased on that account to be a qualifying 90% subsidiary of the issuing company if the disposal is to be for commercial reasons and is not to be part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.”.
- 8 In paragraph 24 (ceasing to meet trading requirements by reason of administration, receivership etc)—
- (a) in sub-paragraph (1)—
    - (i) omit “which is in administration or receivership”,

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- (ii) after “by reason” insert “ only ”,
  - (b) in sub-paragraph (2)(b), after “company” insert “ concerned ”,
  - (c) in sub-paragraph (4)—
    - (i) in paragraph (a), for “of the company or any of its subsidiaries” substitute “ only of the company or any of its qualifying subsidiaries ”,
    - (ii) in paragraph (b), for “and not” substitute “ and is not ”.
- 9 In paragraph 25 (meaning of “qualifying trade”) in sub-paragraph (3)(b), for “any other group company” substitute “ the issuing company or any of its qualifying 90% subsidiaries ”.
- 10 In paragraph 35 (requirement as to the shares) in sub-paragraph (2), for “the issuing company at a future date” substitute “ any person at a future date in respect of the acquisition of the shares ”.
- 11 In paragraph 36 (requirement as to money raised)—
  - (a) in sub-paragraph (1B)(b)—
    - (i) for “relevant trade was not being carried on” substitute “ issuing company or a qualifying 90% subsidiary of that company had not begun to carry on the relevant trade ”,
    - (ii) for “subsidiary” substitute “ qualifying 90% subsidiary of that company ”,
  - (b) in sub-paragraphs (4)(b)(ii) and (5)(b), for “qualifying subsidiary” substitute “ qualifying 90% subsidiary ”.
- 12 In paragraph 40 (entitlement to claim)—
  - (a) in sub-paragraph (2), for paragraph (a) substitute—
    - “(a) the funded trade has been carried on for four months by no person other than the issuing company or a qualifying 90% subsidiary of that company, disregarding—
      - (i) any time spent preparing to carry on that trade, and
      - (ii) any person required to be disregarded in accordance with sub-paragraph (2A) or (2B), and”,
  - (b) after sub-paragraph (2) insert—
    - “(2A) At any time when the funded trade is carried on by the partners in a partnership of which the issuing company, or a qualifying 90% subsidiary of that company, is a member, there shall be disregarded for the purposes of sub-paragraph (2)(a) any other members of the partnership at that time.
    - (2B) At any time when the funded trade is carried on by the parties to a joint venture to which the issuing company, or a qualifying 90% subsidiary of that company, is a party, there shall be disregarded for the purposes of sub-paragraph (2)(a) any other parties to the joint venture at that time.”,
  - (c) for sub-paragraph (5)(a) substitute—
    - “(a) by reason only of the issuing company or any other company being wound up or dissolved without winding up, the funded trade is carried on as mentioned in sub-

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- paragraph (2)(a) for a period shorter than four months, and”;
- (d) in sub-paragraph (5)(b), for “was”, in each place, substitute “ is ”,
- (e) for sub-paragraph (6)(a) substitute—
- “(a) by reason only of anything done as a consequence of the issuing company or any other company being in administration or receivership, the funded trade is carried on as mentioned in sub-paragraph (2)(a) for a period shorter than four months, and”;
- (f) in sub-paragraph (6)(b), after “company” insert “ concerned ”.
- 13 In paragraph 102 (minor definitions etc) after sub-paragraph (7) insert—
- “(8) In determining for the purposes of paragraph 3(2), 23(5) or 36(1B) when a trade is begun to be carried on by a qualifying 90% subsidiary of the issuing company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary.”.
- 14 In paragraph 103 (index of defined expressions), after the entry for “qualifying subsidiary” insert—
- 
- “qualifying 90% subsidiary                      paragraph 23(10) and (11)”.
- 
- 15 The amendments made by this Schedule have effect in relation to shares issued on or after 17th March 2004.

## SCHEDULE 21

Section 116

### CHARGEABLE GAINS: RESTRICTION OF GIFTS RELIEF ETC

#### *Penalties for failure to furnish particulars etc*

- 1 (1) Section 98 of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In the first column of the Table, insert at the appropriate place— “ Section 169G(2) of the 1992 Act. ”.

#### *Charge on settlor with interest in settlement etc: supplementary provisions*

- 2 (1) Section 79 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (5) insert—
- “(5A) In subsection (5) above “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.
- (3) In subsection (6) (power of inspector to require information for purposes of sections 77, 78 and 79) for “inspector” substitute “ officer of the Board ”.

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### *Relief for gifts of business assets*

- 3 (1) Section 165 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In subsection (1) (circumstances in which subsection (4) applies, subject to certain provisions) for “and 169” substitute “, 169, 169B and 169C”.
- (3) In subsection (3) (relief not to apply to disposal in certain cases) after paragraph (b) insert—
- “(ba) in the case of a disposal of shares or securities, the transferee is a company,”.
- (4) In subsection (8) (definitions) for paragraph (aa) substitute—
- “(aa) “holding company” has the meaning given by paragraph 22(1), “trading company” has the meaning given by paragraph 22A, and “trading group” has the meaning given by paragraph 22B, of Schedule A1; and”.
- (5) In subsection (10) (deduction to be allowed in computing chargeable gain on subsequent disposal by transferee, where disposal by transferor is chargeable transfer for inheritance tax purposes) for “after 13th March 1989, in respect of which a claim is made under this section,” substitute “ in relation to which subsection (4) above applies ”.

### *Gifts relief not to be available on certain transfers to settlor-interested settlements etc*

- 4 After section 169A of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

#### **“169B Gifts to settlor-interested settlements etc**

- (1) Neither section 165(4) nor section 260(3) shall apply in relation to a disposal (“the relevant disposal”)—
- (a) made by a person (“the transferor”) to the trustees of a settlement, and
- (b) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, immediately after the making of the relevant disposal,—
- (a) there is a settlor (see section 169E) who has an interest in the settlement (see section 169F), or
- (b) an arrangement (see section 169G) subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
- (a) a chargeable gain would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal,
- (b) in computing the gain, the allowable expenditure would to any extent fall to be reduced in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
- (c) immediately after the making of the relevant disposal,—
- (i) that individual has an interest in the settlement, or

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- (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) This section is subject to section 169D (exception for maintenance funds for historic buildings and certain settlements for disabled persons).

### **169C Clawback of relief if settlement becomes settlor-interested etc**

- (1) This section applies in relation to a disposal (“the relevant disposal”)—
  - (a) made by a person (“the transferor”) to the trustees of a settlement,
  - (b) in relation to which section 165(4) or 260(3) applies, or would apart from this section apply, and
  - (c) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, at any time during the clawback period,—
  - (a) there is a settlor who has an interest in the settlement, or
  - (b) an arrangement subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
  - (a) in computing the chargeable gain which would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal, the allowable expenditure would fall to be reduced,
  - (b) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
  - (c) at any time during the clawback period,—
    - (i) that individual has an interest in the settlement, or
    - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) If no claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time, neither section 165(4) nor section 260(3) shall apply in relation to that disposal.
- (5) Subsections (7) to (9) below apply if a claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time.
- (6) But those subsections do not apply if—
  - (a) the transferor is an individual, and
  - (b) he dies before the material time.
- (7) A chargeable gain, of an amount equal to the amount of the held-over gain (within the meaning of section 165 or 260) on the relevant disposal, shall be treated for the purposes of tax in respect of chargeable gains as accruing to the transferor at the material time.
- (8) For any chargeable period ending after the making of the relevant disposal, the chargeable gains and allowable losses of—
  - (a) the trustees of the settlement, or

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- (b) any person whose title to any property to any extent derives, directly or indirectly, from them,  
shall be determined on the assumption that neither section 165(4)(b) nor section 260(3)(b) ever applied in relation to that disposal.
- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (8) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (10) If a claim for relief under section 165 or 260 in respect of the relevant disposal is revoked, this section shall apply as if the claim had never been made.
- (11) In this section “the clawback period” means the period—
  - (a) beginning immediately after the making of the relevant disposal, and
  - (b) ending six years after the end of the year of assessment in which that disposal was made.
- (12) In this section “the material time” means the time at which subsection (1)(c) above first becomes satisfied.
- (13) This section is subject to section 169D.

#### **169D Exceptions to sections 169B and 169C**

- (1) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement in a year of assessment if the trustees have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc) shall have effect in the case of—
  - (a) the settlement, or
  - (b) any part of the settlement,
 in relation to that year of assessment.
- (2) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement if the following conditions are satisfied.
- (3) The first condition is that, immediately after the making of the disposal,—
  - (a) the settled property is held on trusts which secure that, during the lifetime of a disabled person, not less than half of the property which is applied is applied for the benefit of that person, and
  - (b) the settled property is held on trusts—
    - (i) which secure that, during his lifetime, he is entitled to not less than half of the income arising from the property,
    - (ii) which secure that, during his lifetime, no such income may be applied for the benefit of any other person, or
    - (iii) under which, during his lifetime, no interest in possession in the settled property subsists.



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- (4) The second condition is that if, immediately after the making of the disposal, one or more settlors is an interested settlor, each such settlor must at that time be a disabled beneficiary.
- (5) For the purposes of subsection (4) above a settlor is an “interested settlor” in relation to a settlement if—
- (a) he has an interest in the settlement, or
  - (b) an arrangement subsists under which such an interest will or may be acquired by him;
- and for this purpose, the references to an individual’s spouse in section 169F(2) and (3) shall be disregarded.
- (6) In subsection (4) above “disabled beneficiary”, in relation to a settlement, means a disabled person who—
- (a) is a beneficiary under the settlement, or
  - (b) would be such a beneficiary if he had the interest in the settlement by virtue of which subsection (5)(b) above applies in relation to him.
- (7) In this section “disabled person” means—
- (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his property or managing his affairs; or
  - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (8) In this section “attendance allowance” means an allowance under—
- (a) section 64 of the Social Security Contributions and Benefits Act 1992, or
  - (b) section 64 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (9) In this section “disability living allowance” means a disability living allowance under—
- (a) section 71 of the Social Security Contributions and Benefits Act 1992, or
  - (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (10) The trusts on which settled property is held shall not be treated as falling outside subsection (3) above by reason only of the powers conferred on the trustees by—
- (a) section 32 of the Trustee Act 1925, or
  - (b) section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement).
- (11) The references in subsection (3) above to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as references to the period during which the income is held on trust for him.

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### **169E Meaning of “settlor” in sections 169B to 169D and 169G**

- (1) For the purposes of this section, sections 169B to 169D and section 169G, a person is a settlor in relation to a settlement if—
  - (a) he is an individual, and
  - (b) the settled property consists of, or includes, property originating from him.
- (2) In subsection (1) above, the reference to property originating from a settlor is a reference to—
  - (a) property which that settlor has provided directly or indirectly for the purposes of the settlement, and
  - (b) property which wholly or partly represents that property or any part of it.
- (3) In subsection (2) above, the references to property which a settlor has provided directly or indirectly—
  - (a) include references to property which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but
  - (b) do not include references to property which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person.
- (4) In subsection (2) above, the reference to property which represents other property includes a reference to property which represents accumulated income from that other property.

### **169F Meaning of “interest in a settlement” in sections 169B to 169D**

- (1) For the purposes of this section and sections 169B to 169D, an individual is to be regarded as having an interest in a settlement if subsection (2) or (3) below applies.
- (2) This subsection applies if—
  - (a) any property which may at any time be comprised in the settlement, or
  - (b) any derived property,is, or will or may become, payable to or applicable for the benefit of the individual or his spouse in any circumstances whatsoever.
- (3) This subsection applies if the individual or his spouse enjoys a benefit deriving directly or indirectly from—
  - (a) any property which is comprised in the settlement, or
  - (b) any derived property.
- (4) The references in subsections (2) and (3) above to the spouse of the individual do not include—
  - (a) a spouse from whom the individual is separated—

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- (i) under an order of a court,
    - (ii) under a separation agreement, or
    - (iii) in such circumstances that the separation is likely to be permanent, or
  - (b) the widow or widower of the individual.
- (5) An individual is not to be regarded as having an interest in a settlement by virtue of subsection (2) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
- (a) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
  - (b) the death of a child of the individual where the child had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (6) In this section “derived property”, in relation to any property, means—
- (a) income from that property,
  - (b) property directly or indirectly representing—
    - (i) proceeds of that property, or
    - (ii) proceeds of income from that property, or
  - (c) income from property which is derived property by virtue of paragraph (b) above.

### **169G Meaning of “arrangement” in sections 169B to 169E and information power**

- (1) In sections 169B to 169E “arrangement” or “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.
- (2) An officer of the Board may by notice require any person to whom subsection (3) or (4) below applies to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of sections 169B to 169F.
- (3) This subsection applies to a person who is or has been—
  - (a) a trustee of a settlement,
  - (b) a beneficiary under a settlement, or
  - (c) a settlor in relation to a settlement.
- (4) This subsection applies to a person who—
  - (a) is the spouse of a settlor in relation to a settlement, or
  - (b) has at any time on or after the making of the relevant disposal been the spouse of such a settlor.
- (5) In subsection (4) above “relevant disposal” means the disposal—
  - (a) to which section 169B(1), 169C (1) or 169D (1) or (2) applies or may apply, and
  - (b) in connection with which the notice is given.”.

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*Gifts on which inheritance tax is chargeable etc*

- 5 (1) Section 260 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In subsection (1) (circumstances in which subsection (3) applies, subject to certain provisions) after “169” insert “ , 169B, 169C ”.
- (3) Omit subsection (6A) (unnecessary provision for preventing reduction in case of disposal which is chargeable event for purposes of Schedule 5B).
- (4) Omit subsection (6B) (unnecessary provision for preventing reduction in case of disposal which is chargeable event for purposes of Schedule 5C).
- (5) In subsection (7) (deduction to be allowed in computing chargeable gain on subsequent disposal by transferee, where disposal by transferor is chargeable transfer for inheritance tax purposes) after “subsection (2)(a) above” insert “ (whether or not subsection (3) above applies in relation to it) ”.

*Payment by instalments of tax on gifts*

- 6 (1) Section 281 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In subsection (2) (option to pay capital gains tax by instalments by giving notice to inspector) for “the inspector” substitute “ an officer of the Board ”.
- (3) After subsection (7) insert—
- “(8) Subsection (2) above applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a gain accruing to a person on a disposal if—
- (a) the relevant disposal (within the meaning of section 169C) in question was a disposal of the whole or any part of any assets to which this section applies, and
- (b) at the material time (within the meaning of that section), no part of the subject-matter of that relevant disposal has been disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person).
- (9) Where subsection (2) above so applies, subsections (4) to (7) above apply accordingly but as if for paragraphs (a) and (b) of subsection (7) there were substituted “ any part of the subject-matter of the relevant disposal in question is disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person). ”.”.

*Recovery of tax from donee*

- 7 (1) Section 282 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (4) insert—

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“(5) This section applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a chargeable gain accruing to a person on the disposal of an asset by way of gift.

- (6) For the purposes of this section as applied by subsection (5) above—
- (a) the transferor shall be taken to be the donor, and
  - (b) the trustees to whom the relevant disposal (within the meaning of section 169C) in question was made shall be taken to be the donee.”.

#### *Application of taper relief*

- 8 (1) Schedule A1 to the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 16 (special rules for postponed gains) in sub-paragraph (2) (list of enactments involving postponed gains) after paragraph (d) insert—
- “(da) section 169C(7),”.

#### *Relief for gifts of business assets*

- 9 (1) Schedule 7 to the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 2 (1) (circumstances in which section 165(4) applies, subject to certain provisions, in relation to disposals by trustees of settlement) for “and 169” substitute “, 169, 169B and 169C”.

#### *Commencement*

- 10 (1) The amendment in paragraph 1(2) of this Schedule has effect in relation to any notice given—
- (a) after the passing of this Act, and
  - (b) in respect of the year 2003-04 or any subsequent year of assessment.
- (2) The amendment in paragraph 2(2) of this Schedule has effect in relation to the provision of property on or after 10th December 2003.
- (3) The amendments in paragraphs 2(3) and 6(2) of this Schedule have effect in relation to any notice given in respect of the year 2004-05 or any subsequent year of assessment.
- (4) The amendments in paragraphs 3(2), 4, 5(2), 6(3), 7(2), 8(2) and 9(2) of this Schedule have effect in relation to disposals on or after 10th December 2003 (whenever any earlier disposal as mentioned in section 169B(3)(b) or 169C(3)(b) was made).
- (5) The amendment in paragraph 3(3) of this Schedule has effect in relation to disposals on or after 21st October 2003.
- (6) The amendment in paragraph 3(4) of this Schedule has effect in relation to the year 2004-05 and subsequent years of assessment.
- (7) The amendment in paragraph 3(5) of this Schedule has effect in relation to disposals on or after 10th December 2003.

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- (8) The amendments in paragraph 5(3) and (4) of this Schedule have effect in relation to gains accruing on or after 6th April 2004.
- (9) The amendment in paragraph 5(5) of this Schedule has effect in relation to disposals on or after 6th April 2004.

## SCHEDULE 22

Section 117

## CHARGEABLE GAINS: PRIVATE RESIDENCE RELIEF

*Relief on disposal of private residence*

- 1 (1) Section 222 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In subsection (5)(a) (notice to inspector to determine which of two or more residences is individual's main residence) for "the inspector" (on both occasions) substitute "an officer of the Board".

*Amount of relief*

- 2 (1) Section 223 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In subsection (4) (dwelling-house let as residential accommodation) in paragraph (a), omit the unnecessary words "or those provisions as applied by section 225".
- (3) After subsection (7) insert—
- “(8) This section is subject to—
- (a) section 224 (amount of relief: further provisions), and
- (b) section 226A (private residence relief: cases where relief obtained under section 260).”.

*Amount of relief: further provisions*

- 3 (1) Section 224 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In subsection (1) (gain accruing from disposal of dwelling-house part of which is used exclusively for purposes of trade etc: relief to apply only to portion of gain) for "accrues from" substitute "accrues on".

*Private residence occupied under terms of settlement*

- 4 (1) Section 225 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In the opening words—
- (a) for "a trustee" substitute "the trustees of a settlement", and
- (b) for "the trustee" substitute "the trustees".
- (3) In paragraph (a), for "the trustee" substitute "the trustees".

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- (4) In paragraph (b)—
- (a) for “the inspector” substitute “ an officer of the Board ”, and
  - (b) for “the trustee” substitute “ the trustees ”.
- (5) At the end of that paragraph insert “ ; but section 223 (as so applied) shall apply only on the making of a claim by the trustees. ”.

*Private residence held by personal representatives*

5 After section 225 of the Taxation of Chargeable Gains Act 1992 insert—

**“225A Private residence held by personal representatives**

- (1) Sections 222 to 224 shall also apply in relation to a gain accruing to the personal representatives of a deceased person on a disposal of an asset within section 222 (1) if the following conditions are satisfied.
- (2) The first condition is that, immediately before and immediately after the death of the deceased person, the dwelling-house or part of the dwelling-house mentioned in section 222 (1) was the only or main residence of one or more individuals.
- (3) The second condition is that—
- (a) that individual or one of those individuals has a relevant entitlement, or two or more of those individuals have relevant entitlements, and
  - (b) the relevant entitlement accounts for, or the relevant entitlements together account for, 75% or more of the net proceeds of disposal;
- and for this purpose “relevant entitlement” means an entitlement as legatee of the deceased person to, or to an interest in possession in, the whole or any part of the net proceeds of disposal.
- (4) In subsection (3) above “net proceeds of disposal” means—
- (a) the proceeds of the disposal of the asset realised by the personal representatives, less
  - (b) any incidental costs allowable as a deduction in accordance with section 38(1)(c) in computing the gain accruing to the personal representatives on that disposal,
- but on the assumption that none of the proceeds is required to meet the liabilities of the deceased person’s estate (including any liability to inheritance tax).
- (5) In sections 222 to 224 as applied by this section—
- (a) references to the individual shall be taken as references to the personal representatives except in relation to the occupation of the dwelling-house or part of the dwelling-house, and
  - (b) the notice which may be given to an officer of the Board under section 222(5)(a) shall be a joint notice by the personal representatives and the individual or individuals entitled to occupy the dwelling-house or part of the dwelling-house.
- (6) But section 223 (as so applied) shall apply only on the making of a claim by the personal representatives.”.

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*Private residence relief: cases where relief obtained under section 260*

6 After section 226 of the Taxation of Chargeable Gains Act 1992 insert—

**“226A Private residence relief: cases where relief obtained under section 260**

- (1) This section applies where—
- (a) section 223 applies, or would apart from this section apply, in relation to a gain or part of a gain accruing to an individual or the trustees of a settlement (“the transferor”) on a disposal (the “later disposal”),
  - (b) in computing the chargeable gain which would, apart from section 223, accrue to the transferor on the later disposal, the allowable expenditure would fall to be reduced, and
  - (c) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim or claims under section 260 in respect of one or more earlier disposals (whether or not made to the transferor).
- (2) If a claim for relief under section 260 in respect of—
- (a) the earlier disposal, or
  - (b) if there were two or more such disposals, any of them,
- is made on or before the making of the later disposal, section 223 shall not apply in relation to the gain or part of a gain accruing on the later disposal.
- (3) If a claim for relief under section 260 in respect of—
- (a) the earlier disposal, or
  - (b) if there were two or more such disposals, any of them,
- is made after the making of the later disposal and subsection (2) above does not apply, it is to be assumed for the purposes of capital gains tax that section 223 never applied in relation to the gain or part of a gain accruing on the later disposal.
- (4) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (3) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (5) Where the later disposal is made by the trustees of a settlement, the references in subsections (2) and (3) above to the making of the later disposal shall be read as references to the making of a claim for relief under section 223 in respect of the gain or part of a gain accruing on that disposal.
- (6) If a claim for relief under section 260 in respect of an earlier disposal is revoked, this section shall apply as if the claim had never been made.
- (7) This section is subject to section 226B (exception for maintenance funds for historic buildings).

**226B Exception to section 226A**

- (1) Section 226A shall not apply in relation to a later disposal made by the trustees of a settlement if the trustees have elected that section 691(2) of the



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Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc) shall have effect in the case of—

- (a) the settlement, or
- (b) any part of the settlement,

in relation to each year of assessment in which a relevant earlier disposal is made.

- (2) In this section “relevant earlier disposal”, in relation to a later disposal, means an earlier disposal in respect of which a claim mentioned in section 226A(1)(c) is made.
- (3) This section is to be construed as one with section 226A.”.

#### *Commencement*

- 7 (1) The amendments in paragraphs 1(2) and 4(4)(a) of this Schedule have effect in relation to any notice given on or after 10th December 2003.
- (2) The amendments in paragraphs 2(2), 3(2), 4(2), (3), (4)(b) and (5) and 5 of this Schedule have effect in relation to disposals made on or after 10th December 2003.
- (3) Subject to paragraph 8 of this Schedule, the amendments in paragraphs 2(3) and 6 of this Schedule have effect in relation to gains or parts of gains accruing on later disposals (within the meaning of the section 226A inserted by paragraph 6 of this Schedule) made on or after 10th December 2003 (whenever any relevant earlier disposal was made).
- (4) In sub-paragraph (3) above “relevant earlier disposal”, in relation to a later disposal (within the meaning of the section 226A inserted by paragraph 6 of this Schedule), means an earlier disposal in respect of which a claim mentioned in subsection (1) (c) of that section is made.

#### *Transitional provision*

- 8 (1) This paragraph has effect where section 226A of the Taxation of Chargeable Gains Act 1992 (c. 12) (as inserted by paragraph 6 of this Schedule) (“section 226A”) applies in circumstances in which—
  - (a) the relevant earlier disposal, or
  - (b) if there were two or more such disposals, each of them,was made before 10th December 2003.
- (2) Section 226A shall have effect subject to the following modifications.
- (3) In subsection (2), omit “not” and at the end insert “ subject to the modifications set out in subsections (2A) to (2C) below ”.
- (4) After subsection (2) insert—
  - “(2A) Section 223 (1) shall not apply.
  - (2B) For the purposes of section 223(2)(a) and (3)—
    - (a) the dwelling-house or the part of the dwelling-house in question is to be taken not to have been the individual’s only or main residence during the post-commencement period or any part of that period, and

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- (b) the words “but inclusive of the last 36 months of the period of ownership in any event” shall not have effect in respect of so much of that period of 36 months as falls within the post-commencement period.
- (2C) In subsection (2B) above “post-commencement period” means the period beginning on 10th December 2003 and ending on the date of the later disposal.”.
- (5) In subsection (3), omit “never” and at the end insert “ subject to the modifications set out in subsections (2A) to (2C) above ”.
- (6) In this paragraph “relevant earlier disposal”, in relation to a later disposal, means an earlier disposal in respect of which a claim mentioned in subsection (1)(c) of section 226A is made.
- (7) This paragraph is to be construed as one with section 226A.
- (8) Subsections (5) and (6) of section 223 of the Taxation of Chargeable Gains Act 1992 apply in relation to the subsection (2B)(b) treated as inserted by sub-paragraph (4) above as they apply in relation to subsections (1) and (2)(a) of that section.

## SCHEDULE 23

Section 134

### FINANCE LEASEBACKS: TRANSITIONAL PROVISION

#### *Introduction*

- 1 (1) Sections 228B to 228E of the Capital Allowances Act 2001 (c. 2) (as inserted by section 134) are subject to paragraphs 2 to 9 of this Schedule in their application in relation to existing leasebacks.
- (2) Paragraph 10 of this Schedule makes provision in relation to the taxation of chargeable gains where an existing leaseback terminates.

#### *Section 228B*

- 2 (1) This paragraph applies if the pre-commencement rentals are greater than the total of the actual rental deductions for periods of account up to, but excluding, the transitional period of account.
- (2) Section 228B shall not apply in relation to—
- (a) the transitional period of account if the lessee’s excess rentals are greater than the notional rental deduction for that period, or
  - (b) a subsequent period of account if the unrelieved portion of the lessee’s excess rentals is greater than the notional rental deduction for that period.
- (3) Section 228B is subject to sub-paragraph (4) in its application to—
- (a) the transitional period of account if the lessee’s excess rentals are not greater than the notional rental deduction for that period, or
  - (b) a subsequent period of account if the unrelieved portion of the lessee’s excess rentals is not greater than the notional rental deduction for that period.

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- (4) The permitted maximum for that period of account is the total of—
- (a) the lessee’s excess rentals (in the case of the transitional period of account) or the unrelieved portion of the lessee’s excess rentals (in the case of a subsequent period of account), and
  - (b) the amount given by this calculation—

$$\text{Basic Amount} \times \frac{(\text{Notional Rental Deduction} - \text{Deductible Excess})}{\text{Notional Rental Deduction}}$$

where—

“Basic Amount” means the amount calculated in accordance with section 228B(2),

“Notional Rental Deduction” means the notional rental deduction for the period of account in question, and

“Deductible Excess” means the amount included in the permitted maximum by virtue of sub-paragraph (4)(a).

- (5) But where, in relation to the transitional period of account, the amount given by sub-paragraph (4) is less than the appropriate fraction of the notional rental deduction for that period, the permitted maximum shall be that fraction of that deduction.
- (6) In this paragraph—
- (a) “the lessee’s excess rentals” means—
    - (i) the pre-commencement rentals, minus
    - (ii) the total of the actual rental deductions referred to in sub-paragraph (1), and
  - (b) “the unrelieved portion of the lessee’s excess rentals”, in relation to a period of account, means—
    - (i) the lessee’s excess rentals, minus
    - (ii) the total of the actual rental deductions for periods of account from and including the transitional period up to, but excluding, the period in question.
- (7) In this paragraph—
- “actual rental deduction”, in relation to a period of account, means the amount that may be deducted in respect of amounts payable under the existing leaseback in calculating the lessee’s income or profits for that period of account for the purpose of income tax or corporation tax;
- “notional rental deduction”, in relation to a period of account, means the amount that could, if section 228B did not apply, be deducted in respect of amounts payable under the existing leaseback in calculating the lessee’s income or profits for that period of account for the purpose of income tax or corporation tax.
- (8) Nothing in sub-paragraphs (3) to (5) prevents the inclusion of an amount in the permitted maximum by virtue of section 228B(3) and (4).

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- (9) This paragraph does not apply in relation to any period of account later than a period of account for which the permitted maximum has been determined in accordance with sub-paragraph (3) to (5).

*Section 228B*

- 3 (1) This paragraph applies where—
- (a) the existing leaseback terminates, and
  - (b) in the period of account immediately following that in which it terminates, paragraph 2(2)(b) or 2(3)(b) would apply were it not for the termination.
- (2) The permitted maximum for the period of account in which the leaseback terminates shall also include an amount equal to the amount that the unrelieved portion of the lessee’s excess rentals would have been in the period of account immediately following.

*Section 228C*

- 4 Section 228C shall not apply where the existing leaseback terminates before 17 March 2004.

*Section 228C*

- 5 (1) Section 228C applies subject to this paragraph where—
- (a) the existing leaseback terminates otherwise than by expiry of its term, and
  - (b) the amount calculated in accordance with section 228C(3) exceeds the relevant cap.
- (2) In determining the amount by which income or profits are to be increased under section 228C(2), the amount calculated in accordance with section 228C(3) shall be disregarded to the extent that it exceeds the relevant cap.
- (3) The relevant cap is—

$$(\text{OriginalConsideration} - \text{RelevantRentals}) \times \frac{\text{NetConsideration}}{\text{OriginalConsideration}}$$

where—

“Original Consideration” has the same meaning as in section 228B;

“Relevant Rentals” means—

- (a) the pre-commencement rentals, minus
- (b) the total of—
  - (i) finance charges shown in the accounts for periods that end before 17 March 2004, and
  - (ii) the appropriate proportion of finance charges shown in the accounts for the transitional period of account;

“Net Consideration” has the same meaning as in section 228C.

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### Section 228C

- 6 (1) This paragraph applies if—
- (a) the existing leaseback terminates otherwise than by expiry of its term,
  - (b) upon the termination of the leaseback, or during the period of one month beginning with the date of termination, the lessee becomes the owner of the plant of machinery by acquiring it—
    - (i) from the lessor, or
    - (ii) where no person other than the lessor or a person connected with the lessee has owned the plant or machinery at any time since the termination of the leaseback, from a person connected with the lessee,
  - (c) the person who first acquires the plant or machinery from the lessor does so as a result of incurring capital expenditure equal (at least) to the market value of the plant or machinery at the termination of the leaseback, and
  - (d) the amount of the lessee acquisition expenditure that counts as qualifying expenditure is restricted under section 226.
- (2) If the section 226 restriction is greater than the amount calculated in accordance with section 228C(3)—
- (a) section 228C(2) to (4) shall not apply, but
  - (b) if there is a taxable disposal, section 228C(2) to (4) shall apply subject to sub-paragraph (5).
- (3) If the section 226 restriction is not greater than the amount calculated in accordance with section 228C(3)—
- (a) the amount by which profits or income are increased in accordance with section 228C(2) shall be reduced by the section 226 restriction, and
  - (b) if there is a taxable disposal, section 228C(2) to (4) shall apply again subject to sub-paragraph (5).
- (4) For the purposes of sub-paragraphs (2) and (3) there is a taxable disposal if, during the period of six years beginning with the date of termination of the leaseback—
- (a) the whole of the plant or machinery is the subject of a disposal event (within the meaning of Part 2), or
  - (b) part of the plant or machinery is the subject of such a disposal event.
- (5) Where section 228C(2) to (4) applies subject to this sub-paragraph—
- (a) a reference to the termination shall be treated as a reference to the cessation of ownership of the plant or machinery, and
  - (b) the amount by which profits or income are increased in accordance with section 228C(2) shall be—
    - (i) in a case falling within sub-paragraph (2)(b), the relevant fraction of the amount calculated in accordance with section 228C(3), or
    - (ii) in a case falling within sub-paragraph (3)(b), the relevant fraction of the section 226 restriction.
- (6) In sub-paragraph (5)(b)(i) and (ii) “relevant fraction” means—

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## (Disposal Proceeds – Restricted Qualifying Expenditure) (Lessee Acquisition Expenditure – Restricted Qualifying Expenditure)

where “Disposal Proceeds” means the consideration due to the lessee under the taxable disposal or, if higher, the market value of the plant or machinery at the time of the taxable disposal; but—

- (a) where that amount is greater than the lessee acquisition expenditure, the Disposal Proceeds shall be the amount of the lessee acquisition expenditure, or
  - (b) where that amount is less than the restricted qualifying expenditure, the Disposal Proceeds shall be the amount of the restricted qualifying expenditure.
- (7) Where there is a taxable disposal by virtue of sub-paragraph (4)(b), this paragraph applies in relation to that disposal with the following modifications—
- (a) references in sub-paragraphs (5)(a) and (6) to the plant or machinery shall be taken to be references to the part of the plant or machinery comprised in the taxable disposal;
  - (b) the amount by which profits or income are to be increased by virtue of sub-paragraph (5)(b) shall be the partial disposal fraction of the amount given by sub-paragraph (5)(b)(i) or (ii);
  - (c) the partial disposal fraction of the restricted qualifying expenditure and of the lessee acquisition expenditure shall be used for the purposes of sub-paragraph (6) instead of those amounts of expenditure.
- (8) For the purposes of sub-paragraph (7) the partial disposal fraction is—

### Apportioned Lessee Acquisition Expenditure Lessee Acquisition Expenditure

where “Apportioned Lessee Acquisition Expenditure” means so much of the lessee acquisition expenditure as was attributable to the acquisition of the part of the plant or machinery comprised in the taxable disposal.

- (9) In this paragraph—
- “lessee acquisition expenditure” means the capital expenditure incurred by the lessee in acquiring the plant or machinery as described in sub-paragraph (1)(b),
  - “restricted qualifying expenditure” means the qualifying expenditure under section 226, and
  - “section 226 restriction” means—
    - (a) the lessee acquisition expenditure, minus
    - (b) the restricted qualifying expenditure.

#### Section 228D

- 7 (1) This paragraph applies if the pre-commencement rentals are greater than the total of the actual taxed rentals for periods of account up to, but excluding, the transitional period of account.

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- (2) Section 228D shall not apply in relation to—
- (a) the transitional period of account if the lessor’s excess rentals are greater than the notional taxed rental for that period, or
  - (b) a subsequent period of account if the untaxed portion of the lessor’s excess rentals is greater than the notional taxed rental for that period.
- (3) Section 228D is subject to sub-paragraph (4) in its application to—
- (a) the transitional period of account if the lessor’s excess rentals are not greater than the notional taxed rental for that period, or
  - (b) a subsequent period of account if the untaxed portion of the lessor’s excess rentals is not greater than the notional taxed rental for that period.
- (4) The permitted threshold for that period of account is the total of—
- (a) the lessor’s excess rentals (in the case of the transitional period of account) or the untaxed portion of the lessor’s excess rentals (in the case of a subsequent period of account), and
  - (b) the amount given by this calculation—

$$\text{Basic Amount} \times \frac{(\text{Notional Taxed Rental} - \text{Deductible Excess})}{\text{Notional Taxed Rental}}$$

where—

“Basic Amount” means the amount calculated in accordance with section 228D(4);

“Notional Taxed Rental” means the notional taxed rental for the period of account in question, and

“Deductible Excess” means the amount included in the permitted threshold by virtue of sub-paragraph (4)(a).

- (5) But where, in relation to the transitional period of account, the amount given by sub-paragraph (4) is less than the appropriate fraction of the notional taxed rental for that period, the permitted threshold shall be that fraction of that rental.
- (6) In this paragraph—
- (a) “the lessor’s excess rentals” means—
    - (i) the pre-commencement rentals, minus
    - (ii) the total of the actual taxed rentals referred to in sub-paragraph (1), and
  - (b) “the untaxed portion of the lessor’s excess rentals”, in relation to a period of account, means—
    - (i) the lessor’s excess rentals, minus
    - (ii) the total of the actual taxed rentals for periods of account from and including the transitional period up to, but excluding, the period in question.
- (7) In this paragraph—
- “actual taxed rental”, in relation to a period of account, means the amount that should be taken into consideration in respect of amounts receivable

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under the existing leaseback in calculating the lessor's income or profits for that period of account for the purpose of income tax or corporation tax;

“notional taxed rental”, in relation to a period of account, means the amount that would, if section 228D did not apply, be taken into consideration in respect of amounts receivable under the existing leaseback in calculating the lessor's income or profits for that period of account for the purpose of income tax or corporation tax.

- (8) Nothing in sub-paragraphs (3) to (5) prevents the inclusion of an amount in the permitted threshold by virtue of section 228D(2).
- (9) This paragraph does not apply in relation to any period of account later than a period of account for which the permitted threshold has been determined in accordance with sub-paragraphs (3) to (5).

#### *Section 228D*

- 8 (1) This paragraph applies where—
- (a) the existing leaseback terminates, and
  - (b) in the period of account immediately following that in which it terminates, paragraph 7(2)(b) or 7(3)(b) would apply were it not for the termination.
- (2) The permitted threshold for the period of account in which the leaseback terminates shall also include an amount equal to the amount that the untaxed portion of the lessor's excess rentals would have been in the period of account immediately following.

#### *Section 228E*

- 9 Section 228E shall not apply where the existing leaseback terminates before 17 March 2004.

#### *Chargeable gains*

- 10 (1) Sub-paragraph (2) applies where—
- (a) an existing leaseback is the leaseback in a lease and finance leaseback,
  - (b) the leaseback terminates,
  - (c) on or after the termination there is a disposal, by the user, of the whole or part of the plant and machinery subject to the leaseback, and
  - (d) a chargeable gain that accrues on that disposal (“the relevant chargeable gain”) falls to be taken into account for the purposes of a chargeable gains computation.
- (2) The following fraction of the relevant chargeable gain shall instead be taken into account for the purposes of the chargeable gains computation—

$$\frac{(\text{NetRentals} - \text{TerminationCharge})}{\text{LeasePremium}}$$

where—

“Net Rentals” means—



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- (a) the total of the amounts deducted in calculating the user's income or profits, for the purpose of income tax or corporation tax, in respect of amounts payable under the leaseback, minus
- (b) the total of the amounts shown in the user's accounts in respect of finance charges relating to the leaseback;

“Termination Charge” means the amount by which the user's income or profits are to be increased by virtue of section 228C(2) of the CAA 2001 because of the termination;

“Lease Premium” means the consideration relating to the leaseback referred to in section 228F(6)(b) of the CAA 2001.

- (3) References in this paragraph to termination of the leaseback shall be construed in accordance with section 228H (1) of the CAA 2001.

- (4) In this paragraph—

“CAA 2001” means the Capital Allowances Act 2001 (c. 2);

“chargeable gains computation” means the computation, for the purposes of the TCGA 1992, of the total amount of chargeable gains that accrue to the user in any chargeable period that ends on or after 17 March 2004;

“disposal” shall be construed in accordance with the TCGA 1992;

“lease and finance leaseback” has the same meaning as in section 228F of the CAA 2001;

“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12);

“user” means the person who is the lessee under the leaseback.

#### *Interpretation*

- 11 (1) In this Schedule—

“existing leaseback” means a leaseback the term of which began before 17 March 2004;

“pre-commencement rentals”, in relation to an existing leaseback, means—

- (a) any amounts payable by the lessee to the lessor under the leaseback before 17 March 2004,
- (b) any amounts so payable on or after 17 March 2004 in respect of a period that ends before 17 March 2004, or
- (c) where any amounts are so payable on or after 17 March 2004 in respect of a period which begins before that date and ends on or after that date, the appropriate fraction of each of those amounts;

“transitional period of account” means a period of account that includes 17 March 2004.

- (2) In this Schedule the “appropriate fraction”, in respect of an amount that relates to a particular period, means this fraction—

$$\frac{\text{Pre-commencement Period}}{\text{Whole Period}}$$

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where—

“Pre-commencement Period” means the number of days in the part of the period that falls before 17 March 2004, and

“Whole Period” means the number of days in the whole of the period.

## SCHEDULE 24

Section 136

### MANUFACTURED DIVIDENDS

#### *Amendments of sections 231AA, 231AB and 233 of the Taxes Act 1988*

- 1 (1) In section 231AA of the Taxes Act 1988 (no tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement) after subsection (1) insert—

“(1A) Where subsection (1) above applies to a relevant person in respect of a qualifying distribution, section 233 (1) (certain persons to be treated as having paid income tax at Schedule F ordinary rate on certain distributions etc) shall not apply in relation to that person in respect of that distribution.

In this subsection “relevant person” means a person resident in the United Kingdom, not being a company.”.

- (2) In section 231AB of that Act (no tax credit for original owner under repurchase agreement in respect of certain manufactured dividends) after subsection (1) insert—

“(1A) Where subsection (1) above applies to a relevant person in respect of a qualifying distribution, section 233 (1) (certain persons to be treated as having paid income tax at Schedule F ordinary rate on certain distributions etc) shall not apply in relation to that person in respect of that distribution.

In this subsection “relevant person” means a person resident in the United Kingdom, not being a company.”.

<sup>F54</sup>(3) .....

- (4) The amendment made by sub-paragraph (1) [<sup>F55</sup>has] effect in relation to any qualifying distribution received by a relevant person on or after the commencement date where a manufactured dividend representative of that distribution is or was paid, or treated as paid, by him on or after that date.
- (5) In sub-paragraph (4) “the commencement date” means—
- if the relevant person is an individual, 6th November 2003;
  - if the relevant person is not an individual, 17th March 2004.
- (6) The amendment made by sub-paragraph (2) [<sup>F56</sup>has] effect in relation to any qualifying distribution received by a relevant person on or after the day on which this Act is passed.

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### Textual Amendments

- F54** Sch. 24 para. 1(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 3](#) (with [Sch. 2](#))
- F55** Word in [Sch. 24 para. 1\(4\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 1 para. 654](#) (with [Sch. 2](#))
- F56** Word in [Sch. 24 para. 1\(6\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 1 para. 654](#) (with [Sch. 2](#))

### *Amendments of paragraph 2A of Schedule 23A to the Taxes Act 1988*

- 2 (1) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) paragraph 2A (deductibility of manufactured payment in the case of the manufacturer) is amended as follows.
- (2) For sub-paragraph (1) (amount of manufactured dividend paid allowable as deduction against total income, subject to sub-paragraph (1A)) substitute—
- “(1) Where, in the case of a manufactured dividend, the dividend manufacturer is resident in the United Kingdom but is not a company, an amount (“the relevant amount”) equal to the lesser of—
- (a) the amount of the manufactured dividend paid (so far as it is not otherwise deductible), and
  - (b) the amount of the dividend of which the manufactured dividend is representative,
- shall be allowable as a deduction for the purposes of income tax only under sub-paragraph (1ZA) or (1A) below.”.
- (3) After sub-paragraph (1) insert—
- “(1ZA) The relevant amount shall be allowable under this sub-paragraph as a deduction for the purposes of income tax to the extent that the dividend manufacturer—
- (a) receives the dividend on the equities which is represented by the manufactured dividend or receives a payment which is representative of that dividend, and
  - (b) is chargeable to income tax on the dividend or other payment so received;
- and that deduction shall be made against the amount of the dividend or other payment so received on which the dividend manufacturer is chargeable to income tax.
- (1ZB) Sub-paragraph (1ZA) above shall apply only if the amount of the dividend or other payment so received is received by the dividend manufacturer in—
- (a) the year of assessment in which he pays the manufactured dividend, or
  - (b) the year of assessment immediately before, or immediately after, that year.”.

(4) In sub-paragraph (1A) (circumstances in which amount of manufactured dividend paid is allowable as deduction against total income)—

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- (a) in the opening words, for the words from “An amount shall” to “only” substitute “The relevant amount shall be allowable under this sub-paragraph as a deduction for the purposes of income tax against the total income of the dividend manufacturer”,
  - (b) omit paragraph (a),
  - (c) omit paragraph (c) and the word “or” before it, and
  - (d) omit the words following paragraph (c).
- (5) In sub-paragraph (1B) (no double deduction allowed)—
- (a) for “sub-paragraph (1)” (in both places) substitute “sub-paragraph (1ZA) or (1A)”,
  - (b) in paragraph (a), for “paragraph (a) of sub-paragraph (1A)” substitute “sub-paragraph (1ZA)” and at the end insert “, or”,
  - (c) in paragraph (b), for “paragraph (b) of that sub-paragraph” substitute “sub-paragraph (1A) above”,
  - (d) omit paragraph (c) and the word “or” before it, and
  - (e) for “, other payment or chargeable gain” (in both places) substitute “or other payment”.
- (6) In sub-paragraph (4) (meaning of “deductible”)—
- (a) in paragraph (a), omit “or corporation tax”, and
  - (b) in paragraph (b), omit “or, as the case may be, total profits”.
- (7) Subject to sub-paragraph (10), the amendments made by sub-paragraphs (3), (4)(b) and (5)(b) (and the amendments made by sub-paragraphs (2) and (5)(a) so far as relating to those amendments) have effect in relation to a manufactured dividend paid, or treated as paid, by a dividend manufacturer on or after the commencement date where the dividend or other payment of which that manufactured dividend is representative is or was received by him on or after that date.
- (8) In sub-paragraph (7) “the commencement date” means—
- (a) if the dividend manufacturer is an individual, 6th November 2003;
  - (b) if the dividend manufacturer is not an individual, 17th March 2004.
- (9) Subject to sub-paragraph (10), the amendments made by sub-paragraphs (4)(a) and (5)(c) (and the amendments made by sub-paragraphs (2) and (5)(a) so far as relating to those amendments) have effect in relation to a manufactured dividend paid, or treated as paid, by a dividend manufacturer on or after 17th March 2004.
- (10) In relation to a manufactured dividend paid, or treated as paid, by a dividend manufacturer before the day on which this Act is passed, the sub-paragraph (1) of paragraph 2A of Schedule 23A to the Taxes Act 1988 substituted by sub-paragraph (2) of this paragraph shall have effect with the omission of—
- (a) the words “the lesser of”, and
  - (b) paragraph (b) and the word “and” before it.
- (11) The amendments made by sub-paragraphs (4)(c) and (d) and (5)(d) and (e) have effect in relation to cases where—
- (a) the manufactured dividend is or was paid, or treated as paid, by the dividend manufacturer on or after 17th March 2004, or
  - (b) the chargeable gain accrues or accrued to the dividend manufacturer on or after that date.

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*Amendment of the Taxation of Chargeable Gains Act 1992*

3 (1) After section 263C of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

**“263D Gains accruing to persons paying manufactured dividends**

(1) This section applies where one of the following conditions is satisfied in relation to a person who—

- (a) is resident in the United Kingdom, but
- (b) is not a company.

(2) Condition 1 is that—

- (a) the person is the interim holder under a repurchase agreement,
- (b) he disposes of any United Kingdom equities transferred to him under that agreement,
- (c) a chargeable gain accrues to him on that disposal, and
- (d) under that agreement, he pays a manufactured dividend which is representative of a dividend on those United Kingdom equities.

(3) Condition 2 is that—

- (a) the person is the borrower under a stock lending arrangement,
- (b) he disposes of any United Kingdom equities transferred to him under that arrangement,
- (c) a chargeable gain accrues to him on that disposal, and
- (d) under that arrangement, he pays a manufactured dividend which is representative of a dividend on those United Kingdom equities.

(4) Condition 3 is that—

- (a) the person is a party to a contract or other arrangements for the transfer of United Kingdom equities which is neither a repurchase agreement nor a stock lending arrangement (“the short sale transaction”),
- (b) he disposes of the United Kingdom equities under the short sale transaction,
- (c) a chargeable gain accrues to him on that disposal, and
- (d) under that transaction, he pays a manufactured dividend which is representative of a dividend on those United Kingdom equities.

(5) For the purposes of capital gains tax, a loss shall be treated as accruing to the person on the date on which the chargeable gain mentioned in Condition 1, 2 or 3 accrued to him.

(6) The amount of that loss shall be equal to the lesser of—

- (a) the amount of that chargeable gain, and
- (b) the adjusted amount.

(7) In subsection (6) above “the adjusted amount” means—

$$A - B$$

where—

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A is the lesser of—

- (a) the amount of the manufactured dividend paid, and
- (b) the amount of the dividend of which the manufactured dividend is representative; and

B is an amount equal to so much of the manufactured dividend paid as is allowable to the person as a deduction for the purposes of income tax under paragraph 2A of Schedule 23A to the Taxes Act.

- (8) But that loss shall not be deductible except from the chargeable gain mentioned in Condition 1, 2 or 3.
- (9) For the purposes of this section “manufactured dividend” has the same meaning as in paragraph 2 of Schedule 23A to the Taxes Act; and any reference to a manufactured dividend being paid—
  - (a) includes a reference to a payment falling by virtue of section 737A(5) of that Act to be treated for the purposes of Schedule 23A as if it were made, but
  - (b) does not include a reference to a payment falling by virtue of section 736B(2) of that Act to be treated for the purposes of that Schedule as if it were made.
- (10) For the purposes of this section the cases where there is a repurchase agreement are the following—
  - (a) any case falling within subsection (1) of section 730A of the Taxes Act, and
  - (b) any case which would fall within that subsection if the sale price and the repurchase price were different;
 and, in any such case, any reference to the interim holder shall be construed accordingly.
- (11) In this section “stock lending arrangement” has the same meaning as in section 263B of this Act; and, in relation to any such arrangement, any reference to the borrower shall be construed accordingly.
- (12) In this section “United Kingdom equities” has the meaning given by paragraph 1 (1) of Schedule 23A to the Taxes Act.”.
- (2) In section 737E of the Taxes Act 1988 (power to modify sections 727A, 730A, 730BB and 737A to 737C)—
  - (a) in subsection (4) (powers to modify also exercisable in relation to section 263A of the Taxation of Chargeable Gains Act 1992) after “263A” insert “or 263D”, and
  - (b) in subsection (6)(b) (particular power to modify in relation to section 263A of that Act) after “263A” insert “or 263D”.
- (3) The amendments made by sub-paragraphs (1) and (2) have effect in relation to cases where—
  - (a) the manufactured dividend is or was paid, or treated as paid, by the person on or after 17th March 2004, or
  - (b) the chargeable gain accrues or accrued to the person on or after that date.

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## SCHEDULE 25

Section 144

### LLOYD’S NAMES: CONVERSION TO LIMITED LIABILITY UNDERWRITING

- 1 The Finance Act 1993 (c. 34) is amended as follows.
- 2 After section 179A insert—

#### “179B Conversion to limited liability underwriting

Schedule 20A to this Act (which makes provision for certain reliefs to be available where a member converts to limited liability underwriting) shall have effect.”

- 3 After Schedule 20 insert—

### “SCHEDULE 20A

Section 179B

### LLOYD’S UNDERWRITERS: CONVERSION TO LIMITED LIABILITY UNDERWRITING

## PART 1

### CONVERSION TO UNDERWRITING THROUGH SUCCESSOR COMPANIES

#### Introduction

- 1 (1) This Part of this Schedule applies if the following conditions are satisfied.
  - (2) Condition 1 is that—
    - (a) a member gives notice of his resignation from membership of Lloyd’s in accordance with the rules or practice of Lloyd’s,
    - (b) in accordance with such rules or practice, the member does not undertake any new insurance business at Lloyd’s after the end of the member’s last underwriting year, and
    - (c) the member does not withdraw that notice.
  - (3) Condition 2 is that all of the member’s outstanding syndicate capacity is disposed of by the member under a conversion arrangement to a successor company (“the syndicate capacity disposal”) with effect from the beginning of the underwriting year next following the member’s last underwriting year.
  - (4) Condition 3 is that, immediately before the syndicate capacity disposal,—
    - (a) the member controls the successor company, and
    - (b) more than 50% of the ordinary share capital of the successor company is beneficially owned by the member.
  - (5) Condition 4 is that the syndicate capacity disposal is made in consideration solely of the issue to the member of shares in the successor company.
  - (6) Condition 5 is that the successor company starts to carry on its underwriting business in the underwriting year (“the successor company’s first underwriting year”) next following the member’s last underwriting year.

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- (7) In this paragraph “the member’s last underwriting year”, in relation to a member who gives notice of his resignation from membership of Lloyd's, means the underwriting year during which, or at the end of which, he ceases to be an underwriting member and becomes a non-underwriting member in accordance with the rules or practice of Lloyd's.
- (8) In this paragraph “outstanding syndicate capacity”, in relation to a member, means the syndicate capacity of the member other than any which—
- (a) the member disposes of to a person other than a successor member at or before the end of the member’s last underwriting year, or
  - (b) ceases to exist with effect from the end of that year.

### **Income tax: carry forward of loss relief following conversion**

- 2 (1) This paragraph applies if—
- (a) the member’s total income for a year of assessment includes any income derived by the member from the successor company (whether by way of dividends on the shares issued to the member or otherwise), and
  - (b) throughout the period beginning with the time of the syndicate capacity disposal and ending with the end of that year of assessment,
    - (i) the member controls the successor company, and
    - (ii) more than 50% of the ordinary share capital of the successor company is beneficially owned by the member.
- (2) The carry-forward provision shall apply as if the income so derived were profits on which the member was assessed under Schedule D in respect of the member’s underwriting business for that year.
- (3) But where under the carry-forward provision as applied by sub-paragraph (2) above a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the member has been, or is liable to be, assessed to tax for that year.
- (4) In this paragraph “the carry-forward provision” means section 385 of the Taxes Act 1988 (carry-forward of trading losses against subsequent profits).

### **Capital gains tax: roll-over relief on disposal of syndicate capacity**

- 3 (1) This paragraph applies if—
- (a) the aggregate of any chargeable gains accruing to the member on the syndicate capacity disposal exceeds the aggregate of any allowable losses accruing to him on that disposal, and
  - (b) the member makes a claim under this paragraph to an officer of the Board.
- (2) The amount of the excess mentioned in sub-paragraph (1)(a) above (“the amount of the syndicate capacity gain”) shall for the purposes of capital gains tax be reduced by the amount of the rolled-over gain.



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- (3) For the purpose of computing any chargeable gain accruing to the member on a disposal by him of any issued share or any asset directly or indirectly derived from any issued share—
- (a) the amount of the rolled-over gain shall be apportioned between the issued shares as a whole, and
  - (b) the sums allowable as a deduction under section 38(1)(a) of the Gains Tax Act shall be reduced by the amount apportioned to the issued share under paragraph (a) above; but, in the case of a derived asset, the reduction shall be by an appropriate proportion of that amount;
- and if the issued shares are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the member.
- (4) In this paragraph “the amount of the rolled-over gain” means the lesser of—
- (a) the amount of the syndicate capacity gain, and
  - (b) the aggregate amount of any sums which would be allowable as a deduction under section 38(1)(a) of the Gains Tax Act if the issued shares were disposed of as a whole by the member in circumstances giving rise to a chargeable gain.
- (5) In this paragraph the “issued shares” means the shares in the successor company issued to the member in consideration for the syndicate capacity disposal.

#### **Capital gains tax: roll-over relief on disposal of assets of ancillary trust fund**

- 4 (1) This paragraph applies if—
- (a) at the time of, or after, the syndicate capacity disposal, assets forming some or all of the member’s ancillary trust fund are—
    - (i) withdrawn from the fund, and
    - (ii) without unreasonable delay, disposed of by him to the successor company (the “ATF disposal”),
  - (b) the aggregate of any chargeable gains accruing to the member on the ATF disposal exceeds the aggregate of any allowable losses accruing to him on that disposal,
  - (c) throughout the period beginning with the time of the syndicate capacity disposal and ending with the time of the ATF disposal,—
    - (i) the member controls the successor company, and
    - (ii) more than 50% of the ordinary share capital of the successor company is beneficially owned by the member,
  - (d) the ATF disposal is made in consideration solely of the issue to the member of shares (the “issued shares”) in the successor company, and
  - (e) the member makes a claim under this paragraph to an officer of the Board.
- (2) But this paragraph does not apply if—
- (a) the member could have made a claim under paragraph 3 above, and

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- (b) at the time the member makes a claim under this paragraph, no claim under paragraph 3 above is or has been made by him.
- (3) The amount of the excess mentioned in sub-paragraph (1)(b) above (“the amount of the ATF assets gain”) shall for the purposes of capital gains tax be reduced by the amount of the rolled-over gain.
- (4) For the purpose of computing any chargeable gain accruing to the member on a disposal by him of any issued share or any asset directly or indirectly derived from any issued share—
- (a) the amount of the rolled-over gain shall be apportioned between the issued shares as a whole, and
- (b) the sums allowable as a deduction under section 38(1)(a) of the Gains Tax Act shall be reduced by the amount apportioned to the issued share under paragraph (a) above; but, in the case of a derived asset, the reduction shall be by an appropriate proportion of that amount;
- and if the issued shares are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the member.
- (5) In this paragraph “the amount of the rolled-over gain” means the lesser of—
- (a) subject to sub-paragraph (6) below, the amount of the ATF assets gain, and
- (b) the aggregate amount of any sums which would be allowable as a deduction under section 38(1)(a) of the Gains Tax Act if the issued shares were disposed of as a whole by the member in circumstances giving rise to a chargeable gain.
- (6) If the market value, immediately before the ATF disposal, of the assets disposed of under that disposal exceeds the amount of the ATF assets required, the amount of the ATF assets gain shall for the purposes of sub-paragraph (5)(a) above be reduced by multiplying it by—

$$\frac{R}{T}$$

where—

R is the amount of the ATF assets required, and

T is the market value, immediately before the ATF disposal, of the assets disposed of under that disposal.

- (7) In sub-paragraph (6) above “the amount of the ATF assets required” means the lesser of—
- (a) the amount of security required to be provided by the member in respect of his underwriting business in the member’s last underwriting year, and
- (b) the amount of security required to be provided by the successor company in respect of its underwriting business in the successor company’s first underwriting year.

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- (8) This paragraph applies only on the first occasion on or after 6th April 2004 on which the member makes an ATF disposal.
- (9) If a claim made by the member under paragraph 3 above is revoked, this paragraph shall apply as if the claim had never been made.

### **Interpretation of this Part of this Schedule**

- 5 (1) In this Part of this Schedule—
  - “control” shall be construed in accordance with section 416 of the Taxes Act 1988;
  - “ordinary share capital” has the meaning given by section 832 (1) of the Taxes Act 1988;
  - “successor company” means a corporate member (within the meaning of Chapter 5 of Part 4 of the Finance Act 1994) which is a successor member;
  - “the member’s last underwriting year” has the meaning given by paragraph 1(7) above;
  - “the successor company’s first underwriting year” has the meaning given by paragraph 1(6) above;
  - “the syndicate capacity disposal” has the meaning given by paragraph 1(3) above;
  - “underwriting business”, in relation to a successor company, has the same meaning as in Chapter 5 of Part 4 of the Finance Act 1994.
- (2) For the purposes of this Part of this Schedule, shares comprised in any letter of allotment or similar instrument shall be treated as issued unless—
  - (a) the right to the shares conferred by it remains provisional until accepted, and
  - (b) there has been no acceptance.
- (3) Paragraphs 3 and 4 above (and paragraph 1 above so far as relating to those paragraphs) are to be construed as one with the Gains Tax Act.

## **PART 2**

### **CONVERSION TO UNDERWRITING THROUGH SUCCESSOR PARTNERSHIPS**

#### **Introduction**

- 6 (1) This Part of this Schedule applies if the following conditions are satisfied.
- (2) Condition 1 is that—
  - (a) a member gives notice of his resignation from membership of Lloyd's in accordance with the rules or practice of Lloyd's,
  - (b) in accordance with such rules or practice, the member does not undertake any new insurance business at Lloyd's after the end of the member's last underwriting year, and
  - (c) the member does not withdraw that notice.

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- (3) Condition 2 is that all of the member's outstanding syndicate capacity is disposed of by the member under a conversion arrangement to a successor partnership ("the syndicate capacity disposal") with effect from the beginning of the underwriting year next following the member's last underwriting year.
- (4) Condition 3 is that the member is the only person who disposes of syndicate capacity under a conversion arrangement to the successor partnership.
- (5) Condition 4 is that the successor partnership starts to carry on its underwriting business in the underwriting year next following the member's last underwriting year.
- (6) In this paragraph "the member's last underwriting year", in relation to a member who gives notice of his resignation from membership of Lloyd's, means the underwriting year during which, or at the end of which, he ceases to be an underwriting member and becomes a non-underwriting member in accordance with the rules or practice of Lloyd's.
- (7) In this paragraph "outstanding syndicate capacity", in relation to a member, means the syndicate capacity of the member other than any which—
  - (a) the member disposes of to a person other than a successor member at or before the end of the member's last underwriting year, or
  - (b) ceases to exist with effect from the end of that year.

#### **Income tax: carry forward of loss relief following conversion**

- 7 (1) This paragraph applies if—
- (a) the member's total income for a year of assessment includes profits of the successor partnership's underwriting business, and
  - (b) throughout the period beginning with the time of the syndicate capacity disposal and ending with the end of that year of assessment, the member is beneficially entitled to more than 50% of the profits of that business.
- (2) Section 385 of the Taxes Act 1988 (carry-forward of trading losses against subsequent profits) shall have effect, in its application in relation to the losses of the old underwriting business, as if the profits of the successor partnership's underwriting business to which the member is beneficially entitled for that year were profits on which the member was assessed under Schedule D in respect of the old underwriting business for that year.
- (3) In sub-paragraph (2) above "the old underwriting business" means the member's underwriting business carried on otherwise than through the successor partnership.

#### **Interpretation of this Part of this Schedule**

- 8 In this Part of this Schedule—
- "successor partnership" means a limited partnership formed under the law of Scotland which is a successor member;
- "the syndicate capacity disposal" has the meaning given by paragraph 6(3) above.

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### PART 3

#### SUPPLEMENTARY PROVISIONS

##### Withdrawal of resignation notice

- 9 (1) This paragraph applies if a member—
- (a) makes a claim for relief under or by virtue of this Schedule, and
  - (b) subsequently withdraws the notice of his resignation from membership of Lloyd's.
- (2) The member must give written notice of such withdrawal to an officer of the Board.
- (3) Such a notice must be given no later than six months from the date of the withdrawal of the notice of resignation.
- (4) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required as a result of the withdrawal of the notice of resignation (notwithstanding any limitation on the time within which any adjustment may be made).
- (5) If a member fails, fraudulently or negligently, to comply with sub-paragraphs (2) and (3) above, section 95 of the Taxes Management Act 1970 shall apply to him as if he had fraudulently or negligently made an incorrect return, statement or declaration in connection with the claim for relief made by him under or by virtue of this Schedule.
- (6) In this paragraph “tax” means income tax, capital gains tax or inheritance tax.

##### Interpretation of this Schedule

- 10 In this Schedule—
- “conversion arrangement” means a conversion arrangement made under the rules or practice of Lloyd's;
  - “successor member” has the meaning given by the rules or practice of Lloyd's;
  - “syndicate capacity”, in relation to a member, means an asset comprising the rights of the member under a syndicate in which he participates.

##### Application of this Schedule

- 11 (1) Paragraphs 2 and 3 above (and the other provisions of this Schedule so far as relating to those paragraphs) have effect in relation to syndicate capacity disposals (within the meaning of Part 1 of this Schedule) made on or after 6th April 2004.
- (2) Paragraph 4 above (and the other provisions of this Schedule so far as relating to that paragraph) have effect in relation to ATF disposals (within the meaning of that paragraph) made on or after 6th April 2004 (even if the

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syndicate capacity disposal mentioned in that paragraph was made before that date).

- (3) Paragraph 7 above (and the other provisions of this Schedule so far as relating to that paragraph) have effect in relation to syndicate capacity disposals (within the meaning of Part 2 of this Schedule) made on or after 6th April 2004.”.

## SCHEDULE 26

Section 145

### OFFSHORE FUNDS

#### *Computation of UK equivalent profits: creditor relationships*

- 1 (1) In paragraph 5(3) of Schedule 27 to the Taxes Act 1988 (offshore funds: assumptions to be made in computing UK equivalent profits), after paragraph (c) insert—
- “; and
- (d) that the provisions of the Corporation Tax Acts relating to profits, gains or losses arising from a creditor relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) apply as if the offshore fund were an authorised unit trust;”.
- (2) Paragraph 3 of Schedule 10 to the Finance Act 1996 (c. 8) (assumptions to be made in relation to creditor relationships) shall cease to have effect.
- (3) In relation to a fund established on or before the day on which this Act is passed, this paragraph only has effect if an election that it should have effect has been made by or on behalf of the fund.
- (4) Any such election—
- (a) must be made by notice to an officer of the Board, in such form and within such time as the Board may determine, and
- (b) is irrevocable.
- (5) For the purpose of determining the United Kingdom equivalent profits of an offshore fund for the first account period of the fund in relation to which this paragraph has effect—
- (a) any profits, gains or losses arising from a creditor relationship that were taken into account in determining the United Kingdom equivalent profits of the fund for the preceding account period shall be disregarded, and
- (b) any profits, gains or losses arising from a creditor relationship that—
- (i) arose in, or in respect of, the preceding account period, but
- (ii) were not taken into account in determining the United Kingdom equivalent profits of the fund for that period,
- shall be taken into account.
- (6) In this paragraph—
- “creditor relationship” has the same meaning as in Chapter 2 of Part 4 of the Finance Act 1996; and

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“United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

*Computation of UK equivalent profits: derivative contracts*

- 2 (1) In paragraph 5(3) of Schedule 27 to the Taxes Act 1988 (offshore funds: assumptions to be made in computing UK equivalent profits), after paragraph (d) (inserted by paragraph 1 above) insert—

“and

- (e) that the provisions of the Corporation Tax Acts relating to profits or losses arising from a derivative contract (within the meaning of Schedule 26 to the Finance Act 2002) apply as if the offshore fund were an authorised unit trust.”

- (2) Paragraph 35 of Schedule 26 to the Finance Act 2002 (c. 23) (assumptions to be made in relation to derivative contracts) shall cease to have effect.

- (3) In relation to a fund established on or before the day on which this Act is passed, this paragraph only has effect if an election that it should have effect has been made by or on behalf of the fund.

- (4) Any such election—

- (a) must be made by notice to an officer of the Board, in such form and within such time as the Board may determine, and  
(b) is irrevocable.

- (5) For the purpose of determining the United Kingdom equivalent profits of an offshore fund for the first account period of the fund in relation to which this paragraph has effect—

- (a) any profits or losses arising from a derivative contract that were taken into account in determining the United Kingdom equivalent profits of the fund for the preceding account period shall be disregarded, and  
(b) any profits or losses arising from a derivative contract that—  
(i) arose in, or in respect of, the preceding account period, but  
(ii) were not taken into account in determining the United Kingdom equivalent profits of the fund for that period,  
shall be taken into account.

- (6) In this paragraph—

“derivative contract” has the same meaning as in Schedule 26 to the Finance Act 2002;

“United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 3 At the beginning of Chapter 5 of Part 17 of that Act (offshore funds) insert—

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### *“Meaning of offshore fund*

#### **General definition of offshore fund**

756A) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—

- (a) a company that is resident outside the United Kingdom, or
- (b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or
- (c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).

(2) Subsection (1) has effect subject to—

section 756B (treatment of umbrella funds), and

section 756C (treatment of funds comprising more than one class of interest).

(3) In this section “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000.

### *Treatment of umbrella funds*

#### **Treatment of umbrella funds**

756B) In this Chapter, an “umbrella fund” means an offshore fund—

- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and
- (b) under which the participants are entitled to exchange rights in one pool for rights in another;

and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.

(2) For the purposes of this Chapter (except subsection (1))—

- (a) each part of an umbrella fund shall be regarded as a separate offshore fund, and
- (b) the umbrella fund as a whole shall not be regarded as an offshore fund.

(3) In this Chapter, in relation to a part of an umbrella fund—

- (a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;
- (b) a reference to the income of an offshore fund is to the income arising from those assets;
- (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and



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- (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

*Treatment of funds comprising more than one class of interest*

**Treatment of funds comprising more than one class of interest**

756(1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the “main fund”)—

- (a) each class of interest shall be regarded as a separate offshore fund, and
  - (b) the main fund shall not be regarded as an offshore fund.
- (2) In this section, references to a class of interest in an offshore fund do not include—
- (a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or
  - (b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.
- (3) In this Chapter, in relation to a class of interest in an offshore fund—
- (a) a reference to the assets of an offshore fund is to the assets of the main fund;
  - (b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;
  - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and
  - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 4 (1) Section 757 of that Act (disposal of material interests in offshore funds) is amended as follows.
- (2) In subsection (1)(b) for the words from “the company or unit trust scheme” to the end substitute “ the interest was a material interest in a non-qualifying offshore fund ”.
- (3) In subsection (5)—
- (a) for the words from “if the company that is company A” to the end of the first sentence substitute “to the extent that—
    - (a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and
    - (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.”;

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- (b) in the second sentence, for the words in brackets substitute “ (of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund) ”.
- (4) In subsection (6)—
  - (a) for the words from “so as to require persons” to the end of the first sentence substitute “to the extent that—
    - (a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and
    - (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.”;
  - (b) in the second sentence, for the words in brackets substitute “ (of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund) ”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 5 In section 758 of that Act (offshore funds operating equalisation arrangements), after subsection (6) insert—
- “(7) The Treasury may make provision by regulations as to the application of the provisions of this section in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
  - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (8) Regulations under subsection (7) may—
- (a) make different provision for different cases, and
  - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 6 (1) Section 759 of that Act (material interests in offshore funds) is amended as follows.
- (2) Omit subsections (1) and (1A).
- (3) In subsection (2) for “a company, unit trust scheme or arrangements” substitute “ an offshore fund ”.
- (4) In subsection (3) for the words from “the assets of” to the end substitute “ the assets of the fund ”.
- (5) In subsection (5) for “a company, scheme or arrangements” substitute “ an offshore fund ”.
- (6) In subsections (6) and (8)—
- (a) for “falling within subsection (1)(a) above” substitute “ that is not resident in the United Kingdom ”;
  - (b) after “material interest” insert “ in an offshore fund ”.

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*Treatment of umbrella funds and funds comprising more than one class of interest*

- 7 (1) Section 760 of that Act (non-qualifying offshore funds) is amended as follows.
- (2) In subsection (10)—
- (a) in paragraph (a) for “falling within section 759(1)(a)” substitute “ that is not resident in the United Kingdom ”, and
  - (b) in paragraph (b) for “falling within section 759(1)(b)” substitute “ of which the trustees are not resident in the United Kingdom ”.
- (3) After subsection (10) insert—
- “(10A) For the purposes of this Chapter, in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
  - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C,
- references to an account period of the offshore fund are to an account period of the umbrella fund or the main fund (as the case may be).”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 8 (1) Schedule 27 to that Act (distributing funds: supplementary) is amended as follows.
- (2) In paragraph 3 (1) for “section 759(1)(b) or (c)” substitute “ section 756A(1)(b) or (c) ”.
- (3) In paragraph 11—
- (a) in sub-paragraph (2)(a) for “section 759(1)(a)” substitute “ section 756A(1)(a) ”;
  - (b) in sub-paragraph (2)(b) for “section 759(1)(b)” substitute “ section 756A(1)(b) ”;
  - (c) in sub-paragraph (2)(c) for “section 759(1)(c)” substitute “ section 756A(1)(c) ”.
- (4) After paragraph 20 insert—

*“Application of this Schedule in relation to umbrella funds  
and funds comprising more than one class of interest*

- 21 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
  - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (2) Regulations under this paragraph may—
- (a) make different provision for different cases, and
  - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.”.

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*Treatment of umbrella funds and funds comprising more than one class of interest*

- 9 In Schedule 28 to that Act (computation of offshore income gains) after paragraph 8 insert—

**“PART 3**

SUPPLEMENTARY

*Application of this Schedule in relation to umbrella funds  
and funds comprising more than one class of interest*

- 9 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
  - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (2) Regulations under this paragraph may—
- (a) make different provision for different cases, and
  - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 10 In section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc.) in subsection (9), for the definition of “offshore fund” substitute—
- ““offshore fund” has the same meaning as in Chapter 5 of Part 17;”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 11 In section 212 of the Taxation of Chargeable Gains Act 1992 (c. 12) (annual deemed disposal of holdings of unit trusts etc.) in subsection (6A)—
- (a) in paragraph (a), for “paragraphs (a) to (c) of subsection (1) of section 759” substitute “ paragraphs (a) to (c) of subsection (1) of section 756A ”;
  - (b) in paragraph (b), for “that section” substitute “ section 759 of that Act ”.

*Treatment of umbrella funds and funds comprising more than one class of interest*

- 12 (1) Schedule 10 to the Finance Act 1996 (c. 8) (loan relationships: collective investment schemes) is amended as follows.
- (2) In paragraph 7, for “paragraphs (b) and (c) of subsection (1) of section 759” substitute “ paragraphs (b) and (c) of subsection (1) of section 756A ”.
- (3) In paragraph 8 after sub-paragraph (7E) insert—

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“(7F) In this paragraph “offshore fund” has the same meaning as in Chapter 5 of Part 17 of the Taxes Act 1988 and references to the assets of an offshore fund shall be construed in accordance with that Chapter.”.

*Investment conditions to be met by funds seeking certification as distributing fund*

- 13 (1) Section 760 of the Taxes Act 1988 (non-qualifying offshore funds) is amended as follows.
- (2) In subsection (3) omit paragraphs (b) to (d) and the word “or” preceding paragraph (b).
- (3) Omit subsections (4) to (7).

*Investment conditions to be met by funds seeking certification as distributing fund*

- 14 (1) In Schedule 27 to the Taxes Act 1988 (distributing funds), Part 2 (modifications of conditions for certification in certain cases) is amended as follows.
- (2) In paragraph 6—
- (a) in sub-paragraph (1)(b) for the words from the beginning to “section 760” substitute “ those interests are such that, by virtue of section 760(3)(a) ”;
- (b) in the words following paragraph (c) of sub-paragraph (1), for “section 760(3)(a) to (c)” substitute “ section 760(3)(a) ”;
- (c) in sub-paragraph (3)(a) for “section 760(3)(a) to (c)” substitute “ section 760(3)(a) ”.
- (3) In paragraph 7 for “section 760(3)(a) to (c)” (in both places) substitute “ section 760(3)(a) ”.
- (4) Omit paragraph 10.
- (5) In paragraph 11—
- (a) in sub-paragraphs (1) and (4), omit “section 760(3) and”, and
- (b) in sub-paragraph (1) for “sub-paragraph (3)” substitute “ sub-paragraph (4) ”.
- (6) Omit paragraphs 12 and 13.
- (7) In paragraph 14, for “any of the conditions in paragraphs (a) to (c) of section 760(3)” substitute “ the condition in section 760(3)(a) ”.
- (8) In paragraph 16(1), omit “by a trustee or officer thereof”.

*Exchange of interests of different classes*

- 15 (1) After section 762 of the Taxes Act 1988 insert—

**“762A Exchange of interests of different classes**

- (1) This section applies where—
- (a) classes of interest in an offshore fund (the “main fund”) are treated as separate offshore funds under section 756C; and
- (b) as the result of—

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(i) a reorganisation within the meaning of section 126 of the 1992 Act, or

(ii) a conversion of securities within the meaning of section 132 of that Act,

a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.

(2) Where—

(a) the interest of class A—

(i) is at the time of the exchange an interest in a non-qualifying offshore fund, or

(ii) has been an interest in such a fund at any material time, and

(b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,

section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.

(3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.

(4) In this section—

“class of interest” has the same meaning as in section 756C(1);

“material time” has the same meaning as in section 757.”.

(2) In section 763 of the Taxes Act 1988 (deduction of offshore income gain in determining capital gain), after subsection (6) insert—

“(6A) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 762A (exchange of interests of different classes), the 1992 Act shall have effect as if an amount equal to the offshore income gain to which that disposal gives rise were given (by the person making the exchange) as consideration for the new holding (within the meaning of section 128 of that Act (consideration given or received for new holding on a reorganisation)).”

#### *Correction of cross-reference*

16 (1) In section 763(6) of the Taxes Act 1988 (offshore income gain treated as consideration given on certain disposals), for “section 757(6)” substitute “section 757(5) or (6)”.

(2) Sub-paragraph (1) has effect, and shall be deemed always to have had effect, in relation to disposals on or after 17th April 2002.

#### *Transitional provision*

17 (1) This paragraph applies for the purposes of determining whether an offshore fund that is—

(a) a part of an umbrella fund (which is treated as an offshore fund under section 756B of the Taxes Act 1988), or

(b) a class of interest in a part of an umbrella fund (which is treated as an offshore fund under section 756C of that Act),

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may be certified as a distributing fund under Chapter 5 of Part 17 of that Act in respect of an account period ending on or after the day on which this Act is passed and on or before 31st December 2005.

- (2) Where this paragraph applies—
- (a) subsection (3) of section 760 of the Taxes Act 1988 shall not have effect, and
  - (b) the fund shall not be certified as a distributing fund in respect of a period if at any time in that period—
    - (i) more than 5 per cent by value of the assets of that offshore fund consists of interests in other offshore funds, and
    - (ii) more than 5 per cent by value of the assets of the umbrella fund consists of interests in other offshore funds.
- (3) Where this paragraph applies, references to subsection (3) of section 760 of the Taxes Act 1988 shall have effect as references to sub-paragraph (2)(b) above.
- (4) Words used in Chapter 5 of Part 17 of the Taxes Act 1988 have the same meaning in this paragraph as they have in that Chapter.

## SCHEDULE 27

Section 146

### MEANING OF “OFFSHORE INSTALLATION”

#### PART 1

##### THE NEW DEFINITION

- 1 In Part 19 of the Taxes Act 1988 (supplemental provisions), after section 837B insert—

#### “837C Meaning of “offshore installation”

- (1) For the purposes of the Tax Acts, unless the context otherwise requires, “offshore installation” means a structure which is, is to be, or has been, put to a use specified in subsection (2) while—
- (a) standing in any waters,
  - (b) stationed (by whatever means) in any waters, or
  - (c) standing on the foreshore or other land intermittently covered with water.
- (2) The uses are—
- (a) use for the purposes of exploiting mineral resources by means of a well;
  - (b) use for the purposes of exploration with a view to exploiting mineral resources by means of a well;
  - (c) use for the storage of gas in or under the shore or the bed of any waters;
  - (d) use for the recovery of gas so stored;
  - (e) use for the conveyance of things by means of a pipe;

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- (f) use mainly for the provision of accommodation for persons who work on or from a structure which is, is to be, or has been, put to a use specified in any of paragraphs (a) to (e) while—
    - (i) standing in any waters,
    - (ii) stationed (by whatever means) in any waters, or
    - (iii) standing on the foreshore or other land intermittently covered with water.
  - (3) But a structure is not an offshore installation if—
    - (a) it has ceased permanently to be put to a use specified in subsection (2),
    - (b) it is not, and is not to be, put to any other use specified in subsection (2), and
    - (c) since ceasing permanently to be put to a use specified in subsection (2) it has been put to a use which is not so specified.
  - (4) In this section “structure” includes a ship or other vessel.
  - (5) The Treasury may make provision by regulations as to the meaning of “offshore installation” for the purposes of the Tax Acts.
  - (6) The regulations may—
    - (a) add to, amend or repeal subsections (1) to (4) or any provision of those subsections;
    - (b) make different provision for different purposes;
    - (c) include incidental, consequential, supplemental, saving or transitional provisions.”
- 2 In section 832 (1) of the Taxes Act 1988 (interpretation of the Tax Acts) at the appropriate place insert—
- ““offshore installation” has the meaning given by section 837C;”.
- 3 Subject to the following provisions of this Schedule, paragraphs 1 and 2 have effect—
- (a) for the purposes of income tax and capital gains tax, for the year 2004-05 and subsequent years of assessment;
  - (b) for the purposes of corporation tax, for accounting periods ending on or after 1st April 2004.

## PART 2

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Taxes Act 1988*

- 4 (1) Chapter 3 of Part 7 of the Taxes Act 1988 (enterprise investment scheme) is amended as set out in sub-paragraphs (2) to (4).
- (2) In section 293 (qualifying companies), in subsection (3C)(b) for “oil rigs” substitute “ offshore installations ”.



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- (3) In section 297 (qualifying trades), in subsection (6) for “oil rigs” substitute “ offshore installations ”.
- (4) In section 298 (provisions supplementary to sections 293 and 297), in subsection (5) omit the definition of “oil rig”.
- (5) This paragraph has effect in relation to shares issued on or after 6th April 2004.
- (6) Nothing in this paragraph affects the operation of any of the following provisions in relation to shares issued before that date—
  - (a) Chapter 3 of Part 7 of the Taxes Act 1988 (enterprise investment scheme);
  - (b) sections 573 and 574 of that Act (relief for losses on unlisted shares in trading companies);
  - (c) Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) (enterprise investment scheme: re-investment).

*The Taxes Act 1988*

- 5 (1) Schedule 28B to the Taxes Act 1988 (venture capital trusts) is amended as set out in sub-paragraphs (2) to (4).
- (2) In paragraph 3 (requirements as to company’s business), in sub-paragraph (8)(b) for “oil rigs” substitute “ offshore installations ”.
- (3) In paragraph 4 (qualifying trades), in sub-paragraph (7) for “oil rigs” substitute “ offshore installations ”.
- (4) In paragraph 5 (provisions supplemental to paragraph 4), in sub-paragraph (1) omit the definition of “oil rig”.
- (5) This paragraph has effect for the purpose of determining whether shares or securities issued on or after 6th April 2004 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company’s qualifying holdings.
- (6) Nothing in this paragraph affects the operation of Schedule 28B to the Taxes Act 1988 as it has effect for the purpose of determining whether shares or securities issued before that date are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company’s qualifying holdings.

*Finance Act 2000 (c. 17)*

- 6 (1) Schedule 15 to the Finance Act 2000 (the corporate venturing scheme) is amended as set out in sub-paragraphs (2) to (4).
- (2) In paragraph 23 (the trading activities requirement), in sub-paragraph (8)(a)(i) for “oil rigs” substitute “ offshore installations ”.
- (3) In paragraph 28 (excluded activities: leasing of ships), in sub-paragraph (1) for “oil rigs” substitute “ offshore installations ”.
- (4) In paragraph 28(6) omit the definition of “oil rig”.
- (5) This paragraph has effect in relation to shares issued on or after 6th April 2004.
- (6) Nothing in this paragraph affects the operation of Schedule 15 to the Finance Act 2000 in relation to shares issued before that date.

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*Finance Act 2000 (c. 17)*

- 7 (1) In Schedule 22 to the Finance Act 2000 (tonnage tax), in paragraph 20 (vessels excluded from being qualifying ships) omit sub-paragraph (5).
- (2) This paragraph has effect for accounting periods ending on or after 1st April 2004.

*Capital Allowances Act 2001 (c. 2)*

- 8 In section 94 of the Capital Allowances Act 2001 (expenditure on ships that is not long-life asset expenditure) omit subsections (2)(b) and (3).

*Capital Allowances Act 2001 (c. 2)*

- 9 (1) Section 153 of the Capital Allowances Act 2001 (ships that are not qualifying ships) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) A ship is not a qualifying ship at any time when it is an offshore installation.”
- (3) Omit subsection (3).

*Capital Allowances Act 2001 (c. 2)*

- 10 In Part 2 of Schedule 1 to the Capital Allowances Act 2001 (index of defined expressions) at the appropriate place insert—

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“offshore installation (except in Chapter section 837C of ICTA”  
13 of Part 2)

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*Capital Allowances Act 2001 (c. 2)*

- 11 (1) Paragraphs 8 to 10 have effect—
- (a) for income tax purposes, as respects allowances and charges falling to be made for chargeable periods ending on or after 6th April 2004;
- (b) for corporation tax purposes, as respects allowances and charges falling to be made for chargeable periods ending on or after 1st April 2004.
- (2) In this paragraph “chargeable period” has the meaning given by section 6 of the Capital Allowances Act 2001.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 12 In section 40 of the Income Tax (Earnings and Pensions) Act 2003 (duties on board vessel or aircraft), in subsection (5) for paragraph (b) (meaning of ship) substitute—
- “(b) “ship” does not include an offshore installation;”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 13 In section 305 of the Income Tax (Earnings and Pensions) Act 2003 (offshore oil and gas workers: mainland transfers), in subsection (6) omit the definition of “offshore installation”.

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*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

14 For section 385 of the Income Tax (Earnings and Pensions) Act 2003 substitute—

**“385 Meaning of “ship”**

In this Chapter “ship” does not include an offshore installation.”

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

15 In Part 2 of Schedule 1 to the Income Tax (Earnings and Pensions) Act 2003 (index of defined expressions) at the appropriate place insert—

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“offshore installation	section 837C of ICTA”
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*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

16 Paragraphs 12 to 15 have effect for the year 2004-05 and subsequent years of assessment.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

17 (1) Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) is amended as follows.

(2) In paragraph 18 (excluded activities: leasing of certain ships), in sub-paragraph (1) for “oil rigs” substitute “ offshore installations ”.

(3) In paragraph 18(2) for “oil rig” substitute “ offshore installation ”.

(4) In paragraph 18(8) omit the definition of “oil rig”.

(5) In paragraph 59 (index of defined expressions) at the appropriate place insert—

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“offshore installation	section 837C of ICTA”
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(6) This paragraph has effect in relation to a right to acquire shares in a company granted on or after 6th April 2004.

(7) Nothing in this paragraph affects the operation of Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 in relation to a right to acquire shares in a company granted before that date.

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## SCHEDULE 28

Sections 165 and 167

### REGISTERED PENSION SCHEMES: AUTHORISED PENSIONS—SUPPLEMENTARY

#### PART 1

#### PENSION RULES

##### *Defined benefits and money purchase arrangements*

##### *Ill-health condition*

- 1 For the purposes of this Part the ill-health condition is met if—
- (a) the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and
  - (b) the member has in fact ceased to carry on the member's occupation.

##### *Scheme pension*

- 2 (1) In the case of a pension scheme with fewer than 50 members, a pension payable to the member is a scheme pension for the purposes of this Part if—
- (a) it is payable by an insurance company selected by the scheme administrator or, where the scheme administrator is an insurance company, by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (2) In the case of a pension scheme with 50 or more members, a pension payable to the member is a scheme pension for the purposes of this Part if—
- (a) it is payable by the scheme administrator or by an insurance company selected by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (3) The condition is that (subject to sub-paragraph (4))—
- (a) the pension is payable (at least annually) until the member's death or until the later of the member's death and the end of a term certain not exceeding ten years, and
  - (b) the rate of pension payable in respect of any relevant 12 month period is not less than the rate payable in respect of the previous 12 month period.
- (4) None of the following prevent the pension satisfying the condition in sub-paragraph (3)—
- <sup>F57</sup>(a) the reduction of the pension if the member became entitled to it by reason of the ill-health condition being met,]
  - (b) a reduction in the rate of the pension which applies to all the scheme pensions being paid to or in respect of members of the pension scheme, or
  - (c) if the member becomes entitled to state retirement pension, a reduction in the rate of the pension which does not exceed the rate at which state retirement pension is payable (or, if the rate at which state retirement pension is payable is greater than the rate of the pension, the pension ceasing to be payable).

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- (5) For the purposes of sub-paragraph (4)(c) the following constitute “state retirement pension—
- (a) retirement pension under SSCBA 1992 or SSCB(NI)A 1992, and
  - (b) graduated retirement benefit under NIA 1965 or NIA(NI) 1966.
- (6) A pension is payable until the end of a term certain even if it may, after the death of the member during the term, end on the pensioner—
- (a) marrying,
  - (b) reaching the age of 18, or
  - (c) ceasing to be in full-time education.
- (7) A relevant 12 month period is any 12 month period which—
- (a) begins on or after the first anniversary of the day on which the member becomes entitled to the pension, and
  - (b) ends before the day on which the pension ceases to be payable.

#### Textual Amendments

**F57** Sch. 28 para. 2(4)(a) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 7\(2\), 24\(3\)](#)

### *Money purchase arrangements*

#### *Lifetime annuity*

- 3 (1) For the purposes of this Part an annuity payable to the member is a lifetime annuity if—
- (a) it is payable by an insurance company,
  - (b) the member had an opportunity to select the insurance company,
  - (c) it is payable until the member’s death or until the later of the member’s death and the end of a term certain not exceeding ten years, and
  - (d) it is a level annuity, an increasing annuity or a relevant linked annuity.
- (2) An annuity is payable until the end of a term certain even if it may, after the death of the member during the term, end on the annuitant—
- (a) marrying,
  - (b) reaching the age of 18, or
  - (c) ceasing to be in full-time education.
- (3) An annuity is a level annuity if its amount does not vary from year to year.
- (4) An annuity is an increasing annuity if its amount increases from year to year.
- (5) An annuity is a relevant linked annuity if its amount varies from year to year but only in line with changes in (or by an amount which does not exceed the amount by which it would vary if it varied in line with changes in)—
- (a) the retail prices index,
  - (b) the market value of freely marketable assets, or
  - (c) an index reflecting the market value of freely marketable assets.
- (6) “Freely marketable assets” means assets which are sold on the open market at a price not determined by the member.

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### *Unsecured pension and alternatively secured pension*

- 4 “Unsecured pension” means—
- (a) a short-term annuity, or
  - (b) income withdrawal.
- 5 “Alternatively secured pension” means income withdrawal.

### *Short-term annuity*

- 6 (1) An annuity payable to the member is a short-term annuity if—
- (a) it is purchased by the application of sums or assets representing the whole or any part of the member’s unsecured pension fund in respect of an arrangement,
  - (b) it is payable by an insurance company,
  - (c) the member had an opportunity to select the insurance company,
  - (d) it is payable for a term which does not exceed five years and ends before the member reaches the age of 75, and
  - (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.
- (2) “Level annuity”, “increasing annuity” and “relevant linked annuity” have the same meaning as in paragraph 3.

### *Income withdrawal*

- 7 “Income withdrawal” means—
- (a) if the member has not reached the age of 75, an amount (other than a payment of an annuity) which the member is entitled to be paid from the member’s unsecured pension fund in respect of an arrangement, and
  - (b) if the member has reached the age of 75, an amount which the member is entitled to be paid from the member’s alternatively secured pension fund in respect of an arrangement.

### *Member’s unsecured pension fund*

- 8 (1) For the purposes of this Part the member’s unsecured pension fund in respect of an arrangement consists of such of the sums or assets held for the purposes of the arrangement—
- (a) as have at any time been designated under the arrangement as available for the payment of unsecured pension, and
  - (b) have not been applied for purchasing a scheme pension, a lifetime annuity or a short-term annuity or paid as income withdrawal.
- (2) When the member reaches the age of 75, any relevant uncrystallised funds are to be treated as having been designated under the arrangement as available for the payment of unsecured pension immediately before the member reached that age.
- (3) “Relevant uncrystallised funds” means the sums and assets held for the purposes of the arrangement which—
- (a) have not been applied for purchasing a scheme pension, a lifetime annuity, a dependants’ scheme pension or a dependants’ annuity, and
  - (b) have not previously been designated under the arrangement as available for the payment of unsecured pension.

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*Unsecured pension year and basis amount for unsecured pension year*

- 9 (1) “Unsecured pension year” means—
- (a) the period of 12 months beginning with the day on which the member first becomes entitled to unsecured pension in respect of the arrangement, and
  - (b) each succeeding period of 12 months.
- (2) But when the member reaches the age of 75 or dies before reaching that age, the current unsecured pension year is the last unsecured pension year and ends immediately before the member’s death or 75th birthday.

*Unsecured pension year and basis amount for unsecured pension year*

- 10 (1) The period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”; and the first day of each reference period is, in relation to that period, “the reference date”.
- (2) For the first unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s unsecured pension fund on the nominated date (but subject to sub-paragraph (5)).
- (3) “The nominated date”—
- (a) in relation to the first reference period, is the reference date, and
  - (b) in relation to any subsequent reference period, is such day, within the period of 60 days ending with the reference date, as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the reference date).
- (4) For each other unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s unsecured pension fund—
- (a) if there has been no recent annuity purchase or recent additional fund designation, on the nominated date, and
  - (b) otherwise, immediately after the last annuity purchase or additional fund designation,
- (but subject to sub-paragraph (5)).
- (5) On the occasion of each additional fund designation during an unsecured pension year, the basis amount for that unsecured pension year is to be recalculated in accordance with sub-paragraph (6).
- (6) The basis amount for the unsecured pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s unsecured pension fund immediately after the additional fund designation.
- (7) “Annuity purchase” means the purchase of a scheme pension or a lifetime annuity by the application of sums or assets representing the whole or part of the member’s unsecured pension fund.

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- (8) “Additional fund designation” means the designation under the arrangement of further sums or assets held for the purposes of the arrangement as available for the payment of unsecured pension.
- (9) An annuity purchase or additional fund designation is “recent” if it took place during the period—
  - (a) beginning with the reference date, and
  - (b) ending with the last day of the immediately preceding unsecured pension year.
- (10) Paragraph 14 defines “relevant annuity”.

*Member’s alternatively secured pension fund*

- 11 (1) For the purposes of this Part the member’s alternatively secured pension fund in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement as—
  - (a) meet condition A or condition B, and
  - (b) have not been subsequently applied for purchasing a scheme pension or a lifetime annuity or paid as income withdrawal.
- (2) Condition A is that the sums and assets were part of the member’s unsecured pension fund in respect of the arrangement when the member reached the age of 75.
- (3) Condition B is that the sums and assets—
  - (a) became held for the purposes of the arrangement after the member reached the age of 75, or
  - (b) if the arrangement is a relevant arrangement, have at any time since the member reached that age been designated as available for the payment of alternatively secured pension to the member.
- (4) A relevant arrangement is an arrangement which became a money purchase arrangement after the member reached the age of 75 (having previously been a hybrid arrangement under which, in certain circumstances, defined benefits were payable).

*Alternatively secured pension year and basis amount for alternatively secured pension year*

- 12 (1) “Alternatively secured pension year” means—
  - (a) the period of 12 months beginning with the day on which the member first becomes entitled to alternatively secured pension in respect of the arrangement, and
  - (b) each succeeding period of 12 months.
- (2) When the member dies, the current alternatively secured pension year is the last alternatively secured pension year and ends immediately before the member’s death.
- (3) But if by virtue of pension rule 2 alternatively secured income is to be paid to a person after the member’s death, sub-paragraph (4) applies instead of sub-paragraph (2).
- (4) The last alternatively secured pension year is the earlier of—
  - (a) the tenth alternatively secured pension year, and
  - (b) the last alternatively secured pension year in which, under the arrangement, alternatively secured pension is to be paid.



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*Alternatively secured pension year and basis amount for alternatively secured pension year*

- 13 (1) For the first alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s alternatively secured pension fund on the date on which the member first became entitled to alternatively secured pension in respect of the arrangement.
- (2) For each other alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member’s alternatively secured pension fund on the nominated date.
- (3) “The nominated date” is such day within the period of 60 days ending with the first day of the alternatively secured pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the first day of the alternatively secured pension year).
- (4) Paragraph 14 defines “relevant annuity”.

*Relevant annuity*

- 14 (1) A “relevant annuity” is an annuity of a description prescribed by regulations made by the Board of Inland Revenue.
- (2) The annual amount of a relevant annuity is to be ascertained in accordance with regulations made by the Board of Inland Revenue.
- (3) The regulations may in particular provide for the annual amount to be ascertained by reference to—
- (a) comparative annuity tables published by the Financial Services Authority, or
  - (b) material published by any other person.

**PART 2**

PENSION DEATH BENEFIT RULES

*Defined benefits and money purchase arrangements*

*Meaning of “dependant”*

- 15 (1) A person who was married to the member at the date of the member’s death is a dependant of the member.
- (2) A child of the member is a dependant of the member if the child—
- (a) has not reached the age of 23, or
  - (b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member’s death dependant on the member because of physical or mental impairment.
- (3) A person who was not married to the member at the date of the member’s death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member’s death—
- (a) the person was financially dependant on the member,

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- (b) the person's financial relationship with the member was one of mutual dependence, or
- (c) the person was dependant on the member because of physical or mental impairment.

*Dependants' scheme pension*

- 16 (1) In the case of a pension scheme with fewer than 50 members, a pension payable to a dependant is a dependants' scheme pension for the purposes of this Part if—
- (a) it is payable by an insurance company selected by the scheme administrator or, where the scheme administrator is an insurance company, by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (2) In the case of a pension scheme with 50 or more members, a pension payable to a dependant is a dependants' scheme pension if—
- (a) it is payable by the scheme administrator or by an insurance company selected by the scheme administrator, and
  - (b) it satisfies the condition in sub-paragraph (3).
- (3) The condition is that (subject to sub-paragraph (4))—
- (a) if the dependant is not the member's child, the pension is payable until the dependant's death or until the earlier of the dependant's marrying or dying,
  - (b) if the dependant is the member's child, the pension is payable until the earlier of the dependant's ceasing to be a dependant or dying, or until the earliest of the dependant's marrying, ceasing to be a dependant or dying, and
  - (c) the rate of pension payable in respect of any relevant 12 month period is not less than the rate payable in respect of the previous 12 month period.
- (4) Neither of the following prevents the pension satisfying the condition in sub-paragraph (3)—
- (a) a reduction in the rate of the pension which applies to all the dependants' scheme pensions being paid in respect of members of the pension scheme, or
  - (b) if the dependant becomes entitled to state retirement pension, a reduction in the rate of the pension which does not exceed the rate at which state retirement pension is payable (or, if the rate at which state retirement pension is payable is greater than the rate of the pension, the pension ceasing to be payable).
- (5) For the purposes of sub-paragraph (4)(b) the following constitute "state retirement pension"—
- (a) retirement pension under SSCBA 1992 or SSCB(NI)A 1992, and
  - (b) graduated retirement benefit under NIA 1965 or NIA(NI) 1966.
- (6) A relevant 12 month period is any 12 month period which—
- (a) begins on or after the first anniversary of the member's death, and
  - (b) ends before the day on which the pension ceases to be payable.

*Money purchase arrangements*

*Dependants' annuity*

- 17 (1) An annuity payable to a dependant is a dependants' annuity if—
- (a) it is payable by an insurance company,

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- (b) the member or dependant had an opportunity to select the insurance company,
- (c) it is a level annuity, an increasing annuity or a relevant linked annuity,
- (d) where the dependant is not the member's child, it is payable until the dependant's death or until the earlier of the dependant's marrying or dying, and
- (e) where the dependant is the member's child, it is payable until the earlier of the dependant's ceasing to be a dependant or dying, or until the earliest of the dependant's marrying, ceasing to be a dependant or dying.

- (2) "Level annuity" and "increasing annuity" have the same meaning as in paragraph 3 and "relevant linked annuity" has the meaning that it would have in that paragraph if the reference to the member in sub-paragraph (6) were to the dependant.

*Dependants' unsecured pension and dependants' alternatively secured pension*

18 "Dependants' unsecured pension" means—

- (a) a dependants' short-term annuity, or
- (b) dependants' income withdrawal.

19 "Dependants' alternatively secured pension" means dependants' income withdrawal.

*Dependants' short-term annuity*

20 (1) An annuity payable to a dependant is a dependants' short-term annuity if—

- (a) it is purchased by the application of sums or assets representing the whole or any part of the dependant's unsecured pension fund in respect of an arrangement,
- (b) it is payable by an insurance company,
- (c) the dependant had an opportunity to select the insurance company,
- (d) it is payable for a term which does not exceed five years and ends before the dependant reaches the age of 75 or dies, and
- (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.

- (2) "Level annuity", "increasing annuity" and "relevant linked annuity" have the same meaning as in paragraph 17.

*Dependants' income withdrawal*

21 Dependants' income withdrawal means—

- (a) if the dependant has not reached the age of 75, an amount (other than an annuity) which the dependant is entitled to be paid from the dependant's unsecured pension fund in respect of an arrangement, and
- (b) if the dependant has reached the age of 75, an amount which the dependant is entitled to be paid from the dependant's alternatively secured pension fund in respect of an arrangement.

*Dependant's unsecured pension fund*

22 (1) For the purposes of this Part a dependant's unsecured pension fund in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement—

- (a) as have at any time been designated under the arrangement as available for the payment of dependants' unsecured pension to the dependant, and

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- (b) have not been applied for purchasing a dependants' scheme pension, a dependants' annuity or a dependants' short-term annuity or paid as dependants' income withdrawal.

*Unsecured pension year and basis amount for unsecured pension year*

- 23 (1) “Unsecured pension year” means—
- (a) the period of 12 months beginning with the day on which the dependant first becomes entitled to dependants' unsecured pension in respect of the arrangement, and
  - (b) each succeeding period of 12 months.
- (2) But when the dependant reaches the age of 75 or dies before reaching that age, the current unsecured pension year is the last unsecured pension year and ends immediately before the dependant's death or 75th birthday.
- 24 (1) The period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”; and the first day of each reference period is, in relation to that period, “the reference date”.
- (2) For the first unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's unsecured pension fund on the nominated date (but subject to sub-paragraph (5)).
- (3) “The nominated date”—
- (a) in relation to the first reference period, is the reference date, and
  - (b) in relation to any subsequent reference period, is such day, within the period of 60 days ending with the reference date, as is nominated by the scheme administrator (or if no day is nominated by the scheme administrator, is the reference date).
- (4) For each other unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's unsecured pension fund—
- (a) if there has been no recent annuity purchase or recent additional fund designation, on the nominated date, and
  - (b) otherwise, immediately after the last annuity purchase or additional fund designation,
- (but subject to sub-paragraph (5)).
- (5) On the occasion of each additional fund designation during an unsecured pension year, the basis amount for that unsecured pension year is to be recalculated in accordance with sub-paragraph (6).
- (6) The basis amount for the unsecured pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's unsecured pension fund immediately after the additional fund designation.

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- (7) “Annuity purchase” means the purchase of a dependants' scheme pension or dependants' annuity by the application of sums or assets representing the whole or part of the dependant's unsecured pension fund.
- (8) “Additional fund designation” means the designation under the arrangement of further sums and assets held for the purposes of the arrangement as available for the payment of unsecured dependants' pension to the dependant.
- (9) An annuity purchase or additional fund designation is “recent” if it took place during the period—
  - (a) beginning with the reference date, and
  - (b) ending with the last day of the immediately preceding unsecured pension year.

(10) Paragraph 14 defines “relevant annuity”.

*Dependant's alternatively secured pension fund*

- 25
- (1) For the purposes of this Part a dependant's alternatively secured pension fund in respect of an arrangement consists of such of the sums and assets held for the purposes of the arrangement as—
    - (a) meet condition A or B, and
    - (b) have not been subsequently applied for purchasing a dependants' scheme pension or a dependants' annuity or paid as dependants' income withdrawal.
  - (2) Condition A is that the sums and assets were part of the dependant's unsecured pension fund in respect of the arrangement when the dependant reached the age of 75.
  - (3) Condition B is that the sums and assets have at any time since the dependant reached that age been designated as available for the payment of alternatively secured dependants' pension to the dependant.

*Alternatively secured pension year and basis amount for alternatively secured pension year*

- 26
- (1) “Alternatively secured pension year” means—
    - (a) the period of 12 months beginning with the day on which the dependant first becomes entitled to alternatively secured pension in respect of the arrangement, and
    - (b) each succeeding period of 12 months.
  - (2) When the dependant dies, the current alternatively secured pension year is the last alternatively secured pension year and ends immediately before the dependant's death.
- 27
- (1) For the first alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's alternatively secured pension fund on the date on which the dependant first became entitled to dependants' alternatively secured pension in respect of the arrangement.
  - (2) For each other alternatively secured pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the dependant's alternatively secured pension fund on the nominated date.
  - (3) “The nominated date” is such day within the period of 60 days ending with the first day of the alternatively secured pension year as is nominated by the scheme

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administrator (but if no day is nominated by the scheme administrator, is the first day of the alternatively secured pension year).

(4) Paragraph 14 defines “relevant annuity”.

## SCHEDULE 29

Sections 166 and 168

### REGISTERED PENSION SCHEMES: AUTHORISED LUMP SUMS—SUPPLEMENTARY

#### PART 1

#### LUMP SUM RULE

##### *Pension commencement lump sum*

- 1 (1) For the purposes of this Part a lump sum is a pension commencement lump sum if—
- [<sup>F58</sup>(a) the member becomes entitled to it before reaching the age of 75,
  - (aa) the member becomes entitled to it in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it)]
  - (b) it is paid when all or part of the member’s lifetime allowance is available,
  - (c) it is paid within the period [<sup>F59</sup>beginning six months before, and ending one year after,] the day on which the member becomes entitled to it,
  - (d) it is paid when the member has reached normal minimum pension age (or the ill-health condition is satisfied),
  - (e) <sup>F60</sup> .....
  - (f) it is not an excluded lump sum (see sub-paragraph (4)).
- (2) But if a lump sum falling within sub-paragraph (1) exceeds the permitted maximum, the excess is not a pension commencement lump sum.
- (3) A pension is a relevant pension if—
- (a) it is income withdrawal, a lifetime annuity or a scheme pension, and
  - (b) the member becomes entitled to it under the arrangement under which the member becomes entitled to the lump sum.
- (4) A lump sum is an excluded lump sum if—
- (a) the pension in connection with which the member becomes entitled to it is a scheme pension the rate of which is to reduce (or which is to cease to be payable) in accordance with paragraph 2(4)(c) of Schedule 28 when the member becomes entitled to state retirement pension, and
  - (b) the sole or main purpose of making provision for the pension to be such a pension was to increase the member’s entitlement to a lump sum on which there is no liability to income tax.
- (5) Paragraph 2 defines the permitted maximum.

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### Textual Amendments

- F58** Sch. 29 para. 1(1)(a)(aa) substituted (retrospective to 6.4.2006) for Sch. 29 para. 1(1)(a) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 11\(2\)\(a\)](#), 24(3)
- F59** Words in Sch. 29 para. 1(1)(c) substituted (retrospective to 6.4.2006) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 11\(2\)\(b\)](#), 24(3)
- F60** Words in Sch. 29 para. 1(1)(e) omitted (retrospective to 6.4.2006) by virtue of [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 11\(2\)\(c\)](#), 24(3)

- 2 (1) If sub-paragraph (2) applies, the permitted maximum is nil.
- (2) This sub-paragraph applies if all the member's rights under the arrangement under which the member becomes entitled to the relevant pension are attributable to a disqualifying pension credit.
- (3) A pension credit is disqualifying if, when the member becomes entitled to it, the person subject to the corresponding pension debit has an actual (rather than a prospective) right to payment of a pension under the relevant arrangement.
- (4) The relevant arrangement is the arrangement to which the pension sharing order or provision, by virtue of which the member becomes entitled to the pension credit, relates.
- (5) If sub-paragraph (2) does not apply, the permitted maximum is the lower of—
- (a) the available portion of the member's lump sum allowance, and
- (b) the applicable amount, calculated in accordance with paragraph 3.
- [<sup>F61</sup>(5A) But if the member dies before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to the lump sum, the permitted maximum is the available portion of the member's lump sum allowance.]
- (6) The available portion of the member's lump sum allowance is—

$$\frac{\text{CSLA} - \text{AAC}}{4}$$

where—

CSLA is the current standard lifetime allowance, and

AAC is the aggregate of the amounts crystallised by each benefit crystallisation event which has occurred in relation to the member before the member becomes entitled to the lump sum, as adjusted under sub-paragraph (7) (and if no such benefit crystallisation event has occurred, is nil).

- (7) The adjustment of an amount crystallised by a previous benefit crystallisation event referred to in the definition of AAC is the multiplication of the amount by—

$$\frac{\text{CSLA}}{\text{PSLA}}$$

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where—

CSLA is the current standard lifetime allowance, and

PSLA is the standard lifetime allowance at the time of the previous benefit crystallisation event.

- (8) If the amount given by sub-paragraph (6) is negative, no portion of the member’s lump sum allowance is available.

#### Textual Amendments

**F61** Sch. 29 para. 2(5A) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 11\(4\), 24\(3\)](#)

- 3 (1) Where the member becomes entitled to income withdrawal, the applicable amount is one third of the aggregate of—
- (a) the amount of the sums designated as available for the payment of unsecured pension on that occasion, and
  - (b) the market value of the assets so designated,
- but subject to sub-paragraph (2).
- (2) Any of the sums and assets so designated which represent rights attributable to a disqualifying pension credit are to be disregarded.
- (3) Where the member becomes entitled to a lifetime annuity, the applicable amount is one third of the annuity purchase price.
- (4) “The annuity purchase price” is the aggregate of—
- (a) the amount of such of the sums held for the purposes of the pension scheme, and
  - (b) the market value of such of the assets held for the purposes of the pension scheme,
- as are applied in (or in connection with) the purchase of the annuity, but subject to sub-paragraph (5).
- (5) Any of the sums and assets applied in (or in connection with) the purchase of the annuity which—
- (a) have been designated as available for the payment of unsecured income, or
  - (b) represent rights which are attributable to a disqualifying pension credit,
- are to be disregarded.
- (6) Where the member becomes entitled to a scheme pension, the applicable amount is—

$$\frac{LS + AC}{4}$$

but subject to sub-paragraph (8).

- (7) In sub-paragraph (6)—
- LS is the amount of the lump sum, and



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AC is the amount crystallised by reason of the member becoming entitled to the pension (see section 216).

- (8) There is to be deducted from the aggregate of the amount of the lump sum and the amount crystallised—
- (a) if the scheme pension is funded (in whole or in part) by the surrender of sums or assets representing the whole or part of the member’s unsecured pension fund, the aggregate of the amount of those sums and the market value of those assets, and
  - (b) in any case, so much (if any) of the aggregate of the lump sum and the amount crystallised as represents rights which are attributable to a disqualifying pension credit.

#### *Serious ill-health lump sum*

- 4 (1) For the purposes of this Part a lump sum is a serious ill-health lump sum if—
- (a) before it is paid the scheme administrator has received evidence from a registered medical practitioner that the member is expected to live for less than one year,
  - (b) it is paid when all or part of the member’s lifetime allowance is available,
  - (c) it is paid in respect of an uncrystallised arrangement,
  - (d) it extinguishes the member’s entitlement to benefits under the arrangement, and
  - (e) it is paid when the member has not reached the age of 75.
- (2) An uncrystallised arrangement is an arrangement in respect of which there has been no previous benefit crystallisation event.

#### *Short service refund lump sum*

- 5 (1) For the purposes of this Part a lump sum is a short service refund lump sum if—
- (a) the pension scheme is an occupational pension scheme,
  - (b) the member’s pensionable service was terminated before normal pension age but the member is not entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (c. 48) (basic principle as to short service benefit),
  - (c) there has been no previous benefit crystallisation event in relation to the member and the pension scheme,
  - (d) it extinguishes the member’s entitlement to benefits under the pension scheme, and
  - (e) it is paid when the member has not reached the age of 75.
- (2) But if a lump sum falling within sub-paragraph (1) exceeds an amount equal to the aggregate of the member’s contributions under the pension scheme, the excess is not a short service refund lump sum.
- (3) “Pensionable service”, “normal pension age” and “short service benefit” have the same meaning as in the Pension Schemes Act 1993 (see section 181 (1) of that Act).

#### *Refund of excess contributions lump sum*

- 6 (1) A lump sum is a refund of excess contributions lump sum if—

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- (a) it is paid in respect of a tax year in which the excess contributions condition is met in respect of the member, and
  - (b) it is paid before the end of the period of six years beginning with the last day of the tax year in respect of which it is paid.
- (2) But if a lump sum falling within sub-paragraph (1) exceeds the member's available excess contributions allowance for the tax year in respect of which it is paid, the excess is not a refund of excess contributions lump sum.
- (3) The excess contributions condition is met in respect of a member and a tax year if the amount of relievable pension contributions (see section 188(2) and (3)) paid in respect of the member in the tax year exceeds the maximum amount of relief to which the member is entitled for the tax year under section 190 (annual limit for relief).
- (4) If no refund of excess contributions lump sum has been paid to the member in respect of a tax year (by any registered pension scheme), the available excess contributions allowance for that tax year is—

## RPC – MAR

- (5) If one or more refund of excess contributions lump sums have been paid to the member in respect of a tax year, the available excess contributions allowance for that tax year is—

## RPC – MAR – ALS

or, if the amount resulting from that calculation is negative, is nil.

- (6) In this paragraph—
- RPC is the amount of the relievable pension contributions paid in respect of the member in the tax year,
  - MAR is the maximum amount of relief to which the member is entitled for the tax year under section 190, and
  - ALS is the aggregate of the refund of excess contributions lump sums previously paid to the member in respect of the tax year.

### *Trivial commutation lump sum*

- 7 (1) For the purposes of this Part a lump sum is a trivial commutation lump sum if—
- (a) it is paid when no trivial commutation lump sum has previously been paid to the member (by any registered pension scheme) or, if such a lump sum has previously been paid, before the end of the commutation period,
  - (b) on the nominated date, the value of the member's pension rights does not exceed the commutation limit,
  - (c) it is paid when all or part of the member's lifetime allowance is available,
  - (d) it extinguishes the member's entitlement to benefits under the pension scheme, and
  - (e) it is paid when the member has reached the age of 60 but has not reached the age of 75.

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- (2) The commutation period is the period beginning with the day on which a trivial commutation lump sum is first paid to the member and ending 12 months after that day.
  - (3) The nominated date is the day within the period of three months ending with the first day of the commutation period nominated by the member (or, if no date is nominated, is the first day of the commutation period).
  - (4) The commutation limit is 1% of the standard lifetime allowance on the nominated date.
  - (5) The value of the member's pension rights on the nominated date is the aggregate of—
    - (a) the value of the member's relevant crystallised pension rights on that date (calculated in accordance with paragraph 8), and
    - (b) the value of the member's uncrystallised rights on that date (calculated in accordance with paragraph 9).
- 8
- (1) The value of the member's relevant crystallised pension rights on the nominated date is the aggregate of—
    - (a) the value of the member's relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10 of Schedule 36 (as if the member were the individual mentioned there), as adjusted under sub-paragraph (2), and
    - (b) the aggregate of the amounts crystallised on benefit crystallisation events in the period beginning with 6th April 2006 and ending with the nominated date, as adjusted under sub-paragraph (3).
  - (2) The adjustment referred to in sub-paragraph (1)(a) is the multiplication of the value of the member's relevant crystallised pension rights on 5th April 2006 by—

$$\frac{\text{SLAN}}{\text{FSLA}}$$

where—

SLAN is the standard lifetime allowance on the nominated date, and

FSLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (3) The adjustment referred to in sub-paragraph (1)(b) is the multiplication of the amount crystallised by a previous benefit crystallisation event by—

$$\frac{\text{SLAN}}{\text{PSLA}}$$

where—

SLAN is the standard lifetime allowance on the nominated date, and

PSLA is the standard lifetime allowance when the previous benefit crystallisation event occurred.

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- 9 (1) The value of the member's uncrystallised rights on the nominated date is the aggregate value of the member's uncrystallised rights on that date under each arrangement relating to the member under a registered pension scheme.
- (2) The value on the nominated date of the member's uncrystallised rights under such an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210).

*Winding-up lump sum*

- 10 (1) For the purposes of this Part a lump sum is a winding-up lump sum if—
- (a) the pension scheme is an occupational pension scheme,
  - (b) the pension scheme is being wound-up,
  - (c) the member's employer meets the conditions in sub-paragraph (3),
  - (d) it is paid when all or part of the member's lifetime allowance is available,
  - (e) it extinguishes the member's entitlement to benefits under the pension scheme, and
  - (f) it is paid when the member has not reached the age of 75.
- (2) But if a lump sum falling within sub-paragraph (1) exceeds 1% of the standard lifetime allowance when the lump sum is paid, the excess is not a winding-up lump sum.
- (3) The conditions are that the employer—
- (a) has made contributions under the pension scheme in respect of the member,
  - (b) is not making contributions under any other registered pension scheme in respect of the member, and
  - (c) undertakes to the Inland Revenue not to make such contributions during the period of one year beginning with the day on which the lump sum is paid.

*Lifetime allowance excess lump sum*

- 11 For the purposes of this Part a lump sum is a lifetime allowance excess lump sum if—
- (a) it is paid when none of the member's lifetime allowance is available,
  - (b) it is not a short service refund lump sum or a refund of excess contributions lump sum,
  - (c) it does not reduce the rate of payment of any pension to which the member has become (actually) entitled, or extinguish the member's entitlement to payment of any such pension,
  - (d) it is paid when the member has reached normal minimum pension age (or the ill-health condition is met), and
  - (e) it is paid when the member has not reached the age of 75.

*Interpretation of Part 1*

- 12 (1) Expressions used in this Part of this Schedule and in Schedule 28 have the same meaning in this Part of this Schedule as in Schedule 28.
- (2) Where all or part of the member's lifetime allowance is available immediately before a lump sum is paid, sub-paragraph (3) applies to the lump sum if—
- (a) its amount exceeds the member's available lifetime allowance, and

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- (b) but for that fact, it would satisfy all the requirements of paragraph 1(1), 4(1), 7 (1) or 10(1).
- (3) For the purposes of this Schedule, the whole of the lump sum (and not only so much of it as does not exceed the member's available lifetime allowance) is to be treated as paid when all or part of the member's lifetime allowance is available.
- (4) But sub-paragraph (3) does not apply—
  - (a) in the case of a lump sum that would satisfy all the requirements of paragraph 1(1), to so much of it as would be prevented from being a pension commencement lump sum by paragraph 1(2), and
  - (b) in the case of a lump sum that would satisfy all the requirements of paragraph 10(1), to so much of it as would be prevented from being a winding-up lump sum by paragraph 10(2).
- (5) Where by virtue of paragraph 1(2), 5(2), 6(2) or 10(2) an excess is not an authorised lump sum of one description, that does not prevent the excess being an authorised lump sum of another description.
- (6) “Authorised lump sum” means a lump sum authorised to be paid by the lump sum rule.

## PART 2

### LUMP SUM DEATH BENEFIT RULE

#### *Defined benefits arrangements*

##### *Defined benefits lump sum death benefit*

- 13 For the purposes of this Part a lump sum death benefit is a defined benefits lump sum death benefit if—
- (a) the member had not reached the age of 75 at the date of the member's death,
  - (b) it is paid in respect of a defined benefits arrangement,
  - (c) it is paid before the end of the period of two years beginning with the day on which the member died, and
  - (d) it is not a pension protection lump sum death benefit, trivial commutation lump sum death benefit or winding-up lump sum death benefit.

##### *Pension protection lump sum death benefit*

- 14 (1) For the purposes of this Part a lump sum death benefit is a pension protection lump sum death benefit if—
- (a) the member had not reached the age of 75 at the date of the member's death,
  - (b) it is paid in respect of a defined benefits arrangement,
  - (c) it is paid in respect of a scheme pension to which the member was entitled at the date of the member's death, and
  - (d) the member has specified that it is to be treated as a pension protection lump sum death benefit (instead of a defined benefits lump sum death benefit).
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds the pension protection limit, the excess is not a pension protection lump sum death benefit.
- (3) The pension protection limit is—

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## AC – AP – TPLS

where—

AC is the amount crystallised by reason of the member becoming entitled to the pension (see section 216),

AP is the amount of the pension paid in respect of the period between the member becoming entitled to the pension and the member's death, and

TPLS is the total amount of pension protection lump sum death benefit previously paid in respect of the pension under this paragraph.

### *Money purchase arrangements*

#### *Uncrystallised funds lump sum death benefit*

- 15 (1) For the purposes of this Part a lump sum death benefit is an uncrystallised funds lump sum death benefit if—
- (a) the member had not reached the age of 75 at the date of the member's death,
  - (b) it is paid in respect of a money purchase arrangement,
  - (c) it is paid before the end of the period of two years beginning with the day on which the member died, and
  - (d) it is paid in respect of relevant uncrystallised funds.
- (2) “Relevant uncrystallised funds” means such of the sums and assets held for the purposes of the arrangement at the member's death as—
- (a) had not been applied for purchasing a scheme pension, a lifetime annuity, a dependants' scheme pension or a dependants' annuity, and
  - (b) had not been designated under the arrangement as available for the payment of unsecured pension.
- (3) But if an amount falling within sub-paragraph (1) exceeds the permitted maximum, the excess is not an uncrystallised funds lump sum death benefit.
- (4) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,
- which constitute the relevant uncrystallised funds immediately before the payment is made.

#### *Annuity protection lump sum death benefit*

- 16 (1) For the purposes of this Part a lump sum death benefit is an annuity protection lump sum death benefit if—
- (a) the member had not reached the age of 75 at the date of the member's death,
  - (b) it is paid in respect of a money purchase arrangement, and
  - (c) it is paid in respect of a scheme pension or lifetime annuity to which the member was entitled at the date of the member's death.
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds the annuity protection limit, the excess is not an annuity protection lump sum death benefit.
- (3) The annuity protection limit is—

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## AC – AP – TPLS

where—

AC is the amount crystallised by reason of the member becoming entitled to the pension or annuity (see section 216),

AP is the amount of the pension paid in respect of the period between the member becoming entitled to the pension or annuity and the member's death, and

TPLS is the total amount of annuity protection lump sum death benefit previously paid in respect of the pension or annuity under this paragraph.

### *Unsecured pension fund lump sum death benefit*

- 17 (1) For the purposes of this Part a lump sum death benefit is an unsecured pension fund lump sum death benefit if—
- (a) the member had not reached the age of 75 at the date of the member's death, and
  - (b) it is paid in respect of income withdrawal to which the member was entitled under an arrangement at the date of the member's death.
- (2) A lump sum death benefit is also an unsecured pension fund lump sum death benefit if—
- (a) it is paid on the death of a dependant of the member,
  - (b) the dependant had not reached the age of 75 at the date of the dependant's death, and
  - (c) it is paid in respect of dependants' income withdrawal to which the dependant was entitled at the date of the dependant's death in respect of an arrangement relating to the member.
- (3) But if the amount of a lump sum falling within sub-paragraph (1) or (2) exceeds the permitted maximum, the excess is not an unsecured pension fund lump sum death benefit.
- (4) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,
- representing the member's or dependant's unsecured pension fund in respect of the arrangement immediately before the payment is made.

### *Charity lump sum death benefit*

- 18 (1) A lump sum death benefit is a charity lump sum death benefit if—
- (a) the member had reached the age of 75 at the date of the member's death,
  - (b) there are no dependants of the member,
  - (c) it is paid in respect of income withdrawal to which the member was entitled in respect of an arrangement at the date of the member's death, and
  - (d) it is paid to a charity nominated by the member.
- (2) A lump sum death benefit is also a charity lump sum death benefit if—
- (a) it is paid on the death of a dependant of the member,
  - (b) the dependant had reached the age of 75 at the date of the dependant's death,

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- (c) there are no other dependants of the member,
  - (d) it is paid in respect of dependants' income withdrawal to which the dependant was entitled at the date of the dependant's death in respect of an arrangement relating to the member, and
  - (e) it is paid to a charity nominated by the member (or, if the member made no nomination, by the dependant).
- (3) But if the amount of a lump sum falling within sub-paragraph (1) or (2) exceeds the permitted maximum, the amount of the excess is not a charity lump sum death benefit.
- (4) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,
- representing the member's or dependant's alternatively secured pension fund in respect of the arrangement immediately before the payment is made.

*Transfer lump sum death benefit*

- 19 (1) For the purposes of this Part a lump sum death benefit is a transfer lump sum death benefit if—
- (a) the member had reached the age of 75 at the date of the member's death,
  - (b) there are no dependants of the member,
  - (c) it is paid in respect of income withdrawal to which the member was entitled in respect of an arrangement at the date of the member's death, and
  - (d) it is paid so as to become held for the purposes of, or to represent accrued rights under, arrangements under the pension scheme relating to one or more members of the pension scheme nominated by the deceased member (or if the member made no nomination, selected by the scheme administrator).
- (2) A lump sum death benefit is also a transfer lump sum death benefit if—
- (a) it is paid on the death of a dependant of the member,
  - (b) the dependant had reached the age of 75 at the date of the dependant's death,
  - (c) there are no other dependants of the member,
  - (d) it is paid in respect of dependants' income withdrawal to which at the date of the dependant's death the dependant was entitled in respect of an arrangement relating to the member under the pension scheme, and
  - (e) it is paid so as to become held for the purposes of, or to represent accrued rights under, arrangements under the pension scheme relating to one or more members of the pension scheme nominated by the relevant person (or if the relevant person made no nomination, selected by the scheme administrator).
- (3) The relevant person is the member or, if no nomination is made by the member, the dependant.
- (4) But if the amount of a lump sum falling within sub-paragraph (1) or (2) exceeds the permitted maximum, the amount of the excess is not a transfer lump sum death benefit.
- (5) The permitted maximum is the aggregate of—
- (a) the amount of the sums, and
  - (b) the market value of the assets,



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representing the member's or dependant's alternatively secured pension fund in respect of the arrangement immediately before the payment is made.

#### *Defined benefits and money purchase arrangements*

##### *Trivial commutation lump sum death benefit*

- 20 (1) A lump sum death benefit is a trivial commutation lump sum death benefit if—
- (a) the member had not reached the age of 75 at the date of the member's death,
  - (b) it is paid to a dependant entitled under the pension scheme to pension death benefit in respect of the member,
  - (c) it is paid before the day on which the member would have reached the age of 75, and
  - (d) it extinguishes the dependant's entitlement under the pension scheme to pension death benefit and lump sum death benefit in respect of the member.
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds 1% of the standard lifetime allowance on the date the lump sum is paid, the excess is not a trivial commutation lump sum death benefit.

##### *Winding-up lump sum death benefit*

- 21 (1) For the purposes of this Part a lump sum death benefit is a winding-up lump sum death benefit if—
- (a) the pension scheme is being wound-up,
  - (b) it is paid to a dependant entitled under the pension scheme to pension death benefit in respect of the member, and
  - (c) it extinguishes the dependant's entitlement under the pension scheme to pension death benefit and lump sum death benefit in respect of the member.
- (2) But if the amount of a lump sum falling within sub-paragraph (1) exceeds 1% of the standard lifetime allowance on the date the lump sum is paid, the excess is not a winding-up lump sum death benefit.

#### *Interpretation*

##### *Interpretation of Part 2*

- 22 (1) Expressions used in this Part of this Schedule and in Schedule 28 have the same meaning in this Part of this Schedule as in Schedule 28.
- (2) Where by virtue of paragraph 14(2), 20(2) or 21(2) an excess is not an authorised lump sum death benefit of one description, that does not prevent the excess being an authorised lump sum death benefit of another description.
- (3) "Authorised lump sum death benefit" means a lump sum death benefit authorised to be paid by the lump sum death benefit rule.

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VALID FROM 06/04/2006

SCHEDULE 30 Section 179

REGISTERED PENSION SCHEMES: EMPLOYER LOANS

.....

VALID FROM 06/04/2006

SCHEDULE 31 Section 204

TAXATION OF BENEFITS UNDER REGISTERED PENSION SCHEMES

.....

SCHEDULE 32 Section 216

REGISTERED PENSION SCHEMES: BENEFIT CRYSTALLISATION EVENTS—SUPPLEMENTARY

.....

VALID FROM 06/04/2006

SCHEDULE 33 Section 243

OVERSEAS PENSION SCHEMES: MIGRANT MEMBER RELIEF

.....

SCHEDULE 34 Section 244

NON-UK SCHEMES: APPLICATION OF CERTAIN CHARGES

.....

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VALID FROM 06/04/2006

SCHEDULE 35

Section 281

PENSION SCHEMES ETC: MINOR AND CONSEQUENTIAL AMENDMENTS

SCHEDULE 36

Section 283

PENSION SCHEMES ETC: TRANSITIONAL PROVISIONS AND SAVINGS

**PART 1**

PRE-COMMENCEMENT PENSION SCHEMES

*Deemed registration of existing schemes*

- 1 (1) Any pension scheme which, immediately before 6th April 2006, is—
- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
  - (b) a former approved superannuation fund (see sub-paragraph (3)),
  - (c) a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue on that date as if it were such a relevant statutory scheme,
  - (d) an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured but which does not provide for the immediate payment of benefits,
  - (e) a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
  - (f) an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA, or
  - (g) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA,
- is to be treated as becoming a registered pension scheme on that date.
- (2) Where immediately before 6th April 2006 a retirement benefits scheme is, in accordance with section 611 of ICTA, treated as two or more separate schemes, the reference in sub-paragraph (1)(a) to an approved retirement benefits scheme is to such of the separate schemes as are approved (and not to the whole retirement benefits scheme).
- (3) For the purposes of sub-paragraph (1)(b) any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of ICTA 1970 is a former approved superannuation fund unless since 5th April 1980—

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- (a) the fund has been approved for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefits schemes), or
  - (b) any sum has been paid under the fund by way of contribution.
- (4) Sub-paragraph (1)(a) or (g) applies in relation to a pension scheme approved (for the purposes of Chapter 1, or under Chapter 4, of Part 14 of ICTA) on or after 6th April 2006 if the approval has effect for a period ending with 5th April 2006.
- [<sup>F68</sup>(4A) This Part of this Act applies in relation to a pension scheme that—
- (a) is a registered pension scheme by virtue of sub-paragraph (1)(a), and
  - (b) is neither a public service pension scheme nor an occupational pension scheme,
- as it applies in relation to an occupational pension scheme.]
- (5) This paragraph is subject to paragraph 2 (opt-out).

#### Textual Amendments

**F68** Sch. 36 para. 1(4A) inserted (retrospectively) by [Finance Act 2018 \(c. 3\)](#), Sch. 3 paras. 1(8), 2(4)

#### *Opting out of deemed registration*

- 2 (1) Paragraph 1 (1) does not apply to a pension scheme if the relevant administrator has, at any time before 6th April 2006, notified the Inland Revenue that the pension scheme is not to become a registered pension scheme on that date.
- (2) If, by virtue of sub-paragraph (1) of this paragraph, sub-paragraph (1) of paragraph 1 does not apply to a pension scheme within any of paragraphs (a) to (d), (f) and (g) of that sub-paragraph, income tax is to be charged at the rate of 40% on the relevant amount.
- (3) The relevant amount is an amount equal to the aggregate of—
- (a) the amount of the sums held for the purposes of the pension scheme immediately before 6th April 2006, and
  - (b) the market value (at that time) of the assets held for the purposes of the pension scheme at that time.
- (4) The liability to income tax is a liability of the person who is the relevant administrator on 5th April 2006 or, if more than one person is the relevant administrator on that date, is a joint and several liability of those persons.
- (5) Where tax is charged in accordance with sub-paragraph (2), for the purposes of TCGA 1992 the assets which immediately before 6th April 2006 are held for the purposes of the pension scheme—
- (a) are to be treated as having been acquired at that time for a consideration equal to the amount on which tax is charged by virtue of sub-paragraph (2) by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets on that date, and
  - (b) are not to be treated as having been disposed of by any person at that time.
- (6) “Relevant administrator” means—

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- (a) in the case of a pension scheme within paragraph 1(1)(a), (b) or (c), the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA,
  - (b) in the case of a pension scheme within paragraph 1(1)(d) or (f), the trustee or trustees of the pension scheme, or the insurance company which is a party to the contract in which the pension scheme is comprised,
  - (c) in the case of a pension scheme within paragraph 1(1)(e), the trustees of the scheme or fund, and
  - (d) in the case of a pension scheme within paragraph 1(1)(g), the person who is referred to in section 638 (1) of ICTA.
- (7) If paragraph 1 (1) does not apply to a pension scheme by virtue of sub-paragraph (1), sections 431B(2) and 466(2B) of ICTA (meaning of pension business: pension scheme ceasing to be a registered pension scheme) apply as if the pension scheme had ceased to be a registered pension scheme at the beginning of 6th April 2006.

*Power to modify rules of existing schemes*

- 3
- (1) The Board of Inland Revenue may by regulations make any modifications of the rules of pension schemes to which paragraph 1 (1) applies if the modifications appear appropriate in consequence of, or in connection with, the provision made by this Part (or the repeals made by this Act in consequence of the provision made by this Part).
  - (2) Any modifications of the rules of a pension scheme made by the regulations have effect until the earlier of—
    - (a) the first date after 5th April 2006 on which amendments of the rules of the pension scheme take effect, and
    - (b) the end of the tax year 2008-09.
  - (3) The modifications that may be made by the regulations include, in particular—
    - (a) modifications for relieving pension schemes of obligations to make payments which, on and after 6th April 2006, would be unauthorised payments, and
    - (b) modifications of provisions (however expressed) referring to any limit contained in, or relevant in relation to approval under or for the purposes of, any provision of Part 14 of ICTA (pension schemes etc.) as it has effect at any time before 6th April 2006.

*Scheme administrator*

- 4
- (1) Where under paragraph 1 (1) a pension scheme is treated as becoming a registered pension scheme on 6th April 2006, (despite anything in section 270) the following person is, or the following persons are, to be treated as becoming the scheme administrator of the pension scheme on that date.
  - (2) If the pension scheme is within paragraph 1(1)(a), (b) or (c) immediately before that date, the person who is, or the persons who are, the administrator of the pension scheme under section 611AA of ICTA immediately before that date is or are to be treated as becoming the scheme administrator.
  - (3) If the pension scheme is within paragraph 1(1)(d) or (f) immediately before that date, the trustee or trustees of the pension scheme, or the insurance company which is a

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party to the contract in which the pension scheme is comprised, is or are to be treated as becoming the scheme administrator.

- (4) If the pension scheme is within paragraph 1(1)(e) immediately before that date, the trustees of the scheme or fund are to be treated as becoming the scheme administrator.
- (5) If the pension scheme is within paragraph 1(1)(g) immediately before that date, the person who is referred to in section 638 (1) of ICTA in relation to the pension scheme immediately before that date is to be treated as becoming the scheme administrator.

*Post-commencement withdrawal of approval*

- 5 (1) The repeal by this Act of—
- (a) section 591B (1) of ICTA (withdrawal of approval of retirement benefits scheme),
  - (b) section 620(7) of ICTA (withdrawal of approval of retirement annuity contract), and
  - (c) section 650 (1) of ICTA (withdrawal of approval of approved personal pension arrangements),

does not prevent the withdrawal of an approval under any of those provisions at any time after 5th April 2006 (from any earlier date until 6th April 2006).

- (2) A withdrawal of approval made under any of those provisions by virtue of subparagraph (1) has the same consequences as a withdrawal of approval made under the provision concerned before 6th April 2006, so that (in particular)—
  - (a) sections 591C and 591D of ICTA (tax on cessation of approval of retirement benefits scheme), or
  - (b) sections 650A and 651 of ICTA (charge on cessation of approval of personal pension arrangements and appeal against such withdrawal of such approval),
 apply where they would have applied had the approval been withdrawn before that date.

*Pre-commencement liabilities of scheme administrator*

- 6 Any liabilities or obligations of—
- (a) the administrator of a retirement benefits scheme (within the meaning of Chapter 1 of Part 14 of ICTA), or
  - (b) the scheme administrator of a personal pension scheme (within the meaning of Chapter 4 of Part 14 of ICTA),

incurred in relation to the scheme before 6th April 2006 or by virtue of paragraph 4 are (on and after that date) to be treated as liabilities or obligations of the scheme administrator of the scheme.

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## PART 2

### PRE-COMMENCEMENT RIGHTS: LIFETIME ALLOWANCE CHARGE

#### *“Primary protection”*

- 7 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where—
- (a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and
  - (b) notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) The lifetime allowance enhancement factor is the primary protection factor.
- (3) The primary protection factor is—

$$\frac{RR - SLA}{SLA}$$

where—

RR is the amount of the relevant pre-commencement pension rights of the individual, and

SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) Sub-paragraph (3) is subject to paragraph 11 (pension debit on or after 6th April 2006).
- (5) The amount of the relevant pre-commencement pension rights of the individual is the aggregate of—
- (a) the value of the individual’s relevant uncrystallised pension rights on 5th April 2006 (calculated in accordance with paragraphs 8 and 9), and
  - (b) the value of the individual’s relevant crystallised pension rights on that date (calculated in accordance with paragraph 10).
- 8 (1) The value of the individual’s relevant uncrystallised pension rights on 5th April 2006 is the aggregate value of the individual’s uncrystallised rights on that date under each relevant pension arrangement relating to the individual.
- (2) An arrangement is a “relevant pension arrangement” if it is an arrangement under a pension scheme within paragraph 1(1).
- (3) For the purposes of this paragraph the individual’s rights are “uncrystallised” if the individual has not, on 5th April 2006, become entitled to the present payment of benefits in respect of the rights.
- (4) And the individual is to be treated as entitled to the present payment of benefits in respect of any accrued rights in relation to which the individual has (under section 634A (1) of ICTA) made an election to defer the purchase of an annuity.

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- (5) For the purposes of this paragraph the value of the individual's uncrystallised rights on 5th April 2006 under an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210) on the assumption that the individual became entitled to the present payment of benefits in respect of the rights on that date.
- (6) Section 212 has effect for the purposes of sub-paragraph (5) as if the reference to such age (if any) as must have been reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose "the relevant age" is—
- (a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and
  - (b) otherwise, 60.
- 9 (1) This paragraph applies if any of the individual's uncrystallised rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).
- (2) The value of the individual's uncrystallised rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual's uncrystallised rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is the lower of—
- (a) the value, or the aggregate of the values, calculated under paragraph 8, and
  - (b) the amount arrived at in accordance with sub-paragraph (3).
- (3) The amount arrived at in accordance with this sub-paragraph is—

**20 × MPP**

where MPP is the maximum permitted pension.

- (4) "The maximum permitted pension" means the maximum annual pension that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.
- (5) For the purposes of sub-paragraph (4) it is to be assumed—
- (a) if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April 2006, that the individual left the employment on that date, and
  - (b) if the individual had not reached the lowest age at which a pension may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension scheme, that that fact would not give the Board such grounds.
- (6) For the purposes of this paragraph an arrangement relating to an individual relates to an employment if—



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- (a) the earnings by reference to which benefits under the arrangement are calculated are earnings from the employment, or
  - (b) the person who is the employer in relation to the employment pays contributions under the arrangement in respect of the individual.
- 10 (1) The value of the individual's relevant crystallised pension rights on 5th April 2006 is—

$$25 \times \text{ARP}$$

where ARP is an amount equal to the annual rate at which any relevant existing pension is payable to the individual on 5th April 2006 or, if more than one relevant existing pension is payable to the individual on that date, to the aggregate of the annual rates at which each of the relevant existing pensions is so payable.

- (2) “Relevant existing pension” means—
- (a) a pension under a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
  - (b) a pension under a former approved superannuation fund (defined as for the purposes of paragraph 1(1)(b)),
  - (c) a pension under a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue as if it were such a relevant statutory scheme,
  - (d) an annuity (or pension in the form of income drawdown) under an annuity contract by means of which benefits provided under a pension scheme within paragraph (a), (b) or (c) have been secured,
  - (e) a pension under a scheme or fund mentioned in section 613(4)(b) to (d) of ICTA (Parliamentary pension schemes or funds),
  - (f) an annuity under an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA,
  - (g) an annuity acquired using funds held for the purposes of a personal pension scheme approved under Chapter 4 of Part 14 of ICTA, or
  - (h) a right to make income withdrawals under section 634A of ICTA.
- (3) But a pension, annuity or right is not a relevant existing pension if entitlement to it was attributable to the death of any person.
- (4) In the case of a pension within sub-paragraph (2) taking the form of income drawdown, the annual rate at which the pension is payable on 5th April 2006 is the amount which, on that date, is the maximum annual amount that may be drawn down by the individual as income in accordance with the pension scheme or contract concerned.
- (5) In the case of a right which is a relevant existing pension by virtue of sub-paragraph (2)(h), the annual rate at which the pension is payable on 5th April 2006 is the maximum amount of income withdrawals that may be made by the individual in the period of 12 months referred to in section 634A(4) of ICTA during which 5th April 2006 falls.
- 11 (1) This paragraph applies where—

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- (a) paragraph 7 makes provision for the operation of a lifetime allowance enhancement factor in relation to an individual, and
  - (b) on or after 6th April 2006, the rights of the individual under a relevant pension arrangement (see paragraph 8(2)) relating to the individual are reduced by becoming subject to a pension debit.
- (2) The primary protection factor (see paragraph 7(3)) is to be recalculated.
- (3) The recalculation involves reducing RR (see paragraph 7(3)) by the amount by which the individual's rights are reduced and arriving at a revised primary protection factor.
- (4) The revised primary protection factor operates in relation to any benefit crystallisation event occurring in relation to the individual after the time when the individual's rights are reduced by becoming subject to the pension debit.

*“Enhanced protection”*

- 12 (1) This paragraph applies on and after 6th April 2006 in the case of an individual who has one or more relevant existing arrangements if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
- (2) But this paragraph ceases to apply if—
- (a) relevant benefit accrual occurs under the arrangement, or any of the arrangements (see paragraph 13),
  - (b) a transfer of sums or assets held for the purposes of, or representing accrued rights under, the arrangement or any of the arrangements is made that is not a permitted transfer, or
  - (c) an arrangement relating to the individual is made under a registered pension scheme otherwise than [<sup>F69</sup>in permitted circumstances].
- [<sup>F70</sup>(2A) An arrangement is made in permitted circumstances if it is made—
- (a) for the purposes of a permitted transfer,
  - (b) as part of a retirement-benefit activities compliance exercise, or
  - (c) as part of an age-equality compliance exercise.
- (2B) For the purposes of sub-paragraph (2A)(b) an arrangement (“the new arrangement”) relating to an individual is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement,
  - (d) the making of the new arrangement and the cancellation of the old arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and

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- (e) the rights cancelled under the old arrangement and the rights conferred under the new arrangement are not significantly different.
- (2C) For the purposes of sub-paragraph (2A)(c) an arrangement (“the new arrangement”) is made as part of an age-equality compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (d) the new arrangement is made, and the old arrangement cancelled, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them).]
- (3) Where this paragraph applies in the case of an individual there is no liability to the lifetime allowance charge in respect of the individual.
- (4) An individual has a relevant existing arrangement if—
- (a) before 6th April 2006 an arrangement relating to the individual has been made under a pension scheme within paragraph 1(1), and
  - (b) the pension scheme becomes a registered pension scheme on that date.
- (5) Notice of intention to rely on this paragraph in relation to the individual may not be given in a case where—
- (a) the value of the uncrystallised rights of the individual on 5th April 2006 under an arrangement, or
  - (b) the aggregate of the values of the uncrystallised rights of the individual on 5th April 2006 under arrangements,
- is arrived at in accordance with paragraph 9 unless such rights as, in accordance with regulations made by the Board of Inland Revenue, are to be treated as representing the relevant excess have been surrendered.
- (6) In sub-paragraph (5) “the relevant excess” means the amount by which the value of—
- (a) the individual’s uncrystallised rights, or
  - (b) the aggregate of the values of the individual’s uncrystallised rights,
- as arrived at in accordance with paragraph 8 exceeds what it would be if arrived at under paragraph 9.
- (7) For the purposes of this paragraph and paragraphs 13 and 15, a transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement is a permitted transfer if—
- (a) <sup>F71</sup> . . . . .
  - (b) the sums or assets <sup>F72</sup> . . . are transferred so that sub-paragraph (8) applies in relation to them, and
  - (c) the aggregate of the amount of [<sup>F73</sup>the] sums and the market value of [<sup>F73</sup>the] assets is, applying normal actuarial practice, equivalent before and after the transfer.

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- (8) This sub-paragraph applies in relation to sums or assets held for the purposes of, or representing accrued rights under, the arrangement if—
- (a) they are transferred so as to become held for the purposes of a money purchase arrangement that is not a cash balance arrangement <sup>F74</sup> . . . <sup>F74</sup> . . .
  - (b) where the transfer occurs in connection with the winding up of the pension scheme under which the arrangement is made and the arrangement is a cash balance arrangement or a defined benefits arrangement, they are transferred so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement relating to the same employment as the arrangement and made under a registered pension scheme or recognised overseas pension scheme.
  - <sup>F75</sup>(c) where the arrangement is a cash balance arrangement or a defined benefits arrangement relating to a present or former employment, they are transferred in connection with a relevant business transfer so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement made under a registered pension scheme or recognised overseas pension scheme, or
  - (d) where the arrangement (“the old arrangement”) is a cash balance arrangement or a defined benefits arrangement, they are transferred as part of a retirement-benefit activities compliance exercise so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement (“the new arrangement”) relating to the same employment as the old arrangement and made under a registered pension scheme or recognised overseas pension scheme.]
- <sup>F76</sup>(8A) For the purposes of sub-paragraph (8)(c) “relevant business transfer” means a transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another—
- (a) which involves the transfer of at least 20 employees, and
  - (b) in the case of which, if the transferor and the transferee are bodies corporate, they would not be treated as members of the same group for the purposes of Chapter 4 of Part 10 of ICTA.
- (8B) For the purposes of sub-paragraph (8)(d) sums or assets held for the purposes of, or representing accrued rights under, the old arrangement are transferred as part of a retirement-benefit activities compliance exercise if—
- (a) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (b) the transfer constitutes or forms part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the old arrangement was made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005.]
- (9) Where there is a permitted transfer—
- (a) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(a), this paragraph (and paragraphs 13 and 14) apply in relation to the arrangement <sup>F77</sup> . . . to which the transfer is made, and
  - (b) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(b) [<sup>F78</sup> or (d)], this paragraph (and paragraphs 13 and 15 [<sup>F79</sup> to 17]) apply as if the

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arrangement to which the transfer is made were the same as that from which it is made, <sup>F80</sup>and

- (c) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(c), this paragraph (and paragraphs 13, 15 to 17 and 17A(3)) apply as if the arrangement to which the transfer is made were the same as that from which it is made and (if the employment is transferred) as if the employment with the transferee were the employment with the transferor.]

<sup>F81</sup>(10) The Treasury may by order amend sub-paragraph (8) (and make other amendments consequential on any amendment of that sub-paragraph).]

#### Textual Amendments

- F69** Words in Sch. 36 para. 12(2)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(2\), 24\(3\)](#)
- F70** Sch. 36 para. 12(2A)-(2C) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(3\), 24\(3\)](#)
- F71** Sch. 36 para. 12(7)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(4\)\(a\), 24\(3\)](#)
- F72** Words in Sch. 36 para. 12(7)(b) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(4\)\(b\), 24\(3\)](#)
- F73** Words in Sch. 36 para. 12(7)(c) substituted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(4\)\(c\), 24\(3\)](#)
- F74** Words in Sch. 36 para. 12(8)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(5\), 24\(3\)](#)
- F75** Sch. 36 para. 12(8)(c)(d) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(6\), 24\(3\)](#)
- F76** Sch. 36 para. 12(8A)(8B) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(7\), 24\(3\)](#)
- F77** Words in Sch. 36 para. 12(9)(a) omitted (retrospectively) by virtue of [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(8\)\(a\), 24\(3\)](#)
- F78** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(8\)\(b\), 24\(3\)](#)
- F79** Words in Sch. 36 para. 12(9)(b) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(8\)\(b\), 24\(3\)](#)
- F80** Sch. 36 para. 12(9)(c) and preceding word inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(8\)\(c\), 24\(3\)](#)
- F81** Sch. 36 para. 12(10) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 17\(9\), 24\(3\)](#)

- 13 Relevant benefit accrual occurs in relation to an individual under an arrangement—
- (a) in the case of a money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement (see paragraph 14), and
- (b) in the case of a cash balance arrangement or defined benefits arrangement, if, when a benefit crystallisation event or transfer that is a permitted transfer by virtue of paragraph 12(8)(a) (a “relevant event”) occurs in relation to the individual and the arrangement, the relevant crystallised amount exceeds the appropriate limit (see paragraph 15).
- 14 (1) For the purposes of paragraph 13(a) a relevant contribution is paid under the arrangement if—

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- (a) a relievable pension contribution is paid by or on behalf of the individual under the arrangement,
  - (b) a contribution is paid in respect of the individual under the arrangement by an employer of the individual, or
  - (c) a contribution paid by an employer of the individual otherwise than in respect of the individual subsequently becomes held for the purposes of the provision under the arrangement of benefits to or in respect of the individual.
- (2) But the following are not relevant contributions for the purposes of paragraph 13(a)
- (a) contributions which may be applied only for the provision of benefits in respect of the individual after the individual's death, and
  - (b) minimum payments under section 8 of the Pension Schemes Act 1993 (c. 48) or section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) or any amount recovered under regulations made under subsection (3) of either of those sections.
- 15 (1) For the purposes of paragraph 13(b) “the relevant crystallised amount” is—
- (a) if the relevant event is the first relevant event occurring in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement (“the first relevant event”), the amount crystallised by that event, and
  - (b) otherwise, the aggregate of the amount crystallised by the relevant event and the amount crystallised by the relevant event, or by each of the relevant events, which has or have previously occurred in relation to the individual and to the arrangement or any other cash balance arrangement or defined benefits arrangement related to the arrangement.
- (2) If the relevant event is a permitted transfer which is not a benefit crystallisation event, sub-paragraph (1) applies as if the amount crystallised by the event were the aggregate of—
- (a) the amount of any sums held for the purposes of, or representing accrued rights under, the arrangement [<sup>F82</sup>which are transferred], and
  - (b) the market value of any assets held for the purposes of, or representing accrued rights under, the arrangement [<sup>F82</sup>which are transferred].
- (3) For the purposes of this paragraph (and paragraph 16) another arrangement is related to the arrangement if—
- (a) the other arrangement relates to the individual, and
  - (b) both the arrangement and the other arrangement relate to the same employment;
- and whether an arrangement relates to an employment is to be determined in accordance with paragraph 9(6).
- (4) For the purposes of paragraph 13(b) “the appropriate limit”, in relation to a relevant event, is the greater of—
- (a) the value of the individual's rights on 5th April 2006 under the arrangement, or (where there is or are one or more other cash balance arrangements or defined benefits arrangements related to the arrangement) the aggregate of the value of the individual's rights under the arrangement and the other arrangement or arrangements, arrived at in accordance with paragraphs 8 and

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- 9, as increased by the relevant indexation percentage (see sub-paragraph (5)), and
- (b) what would be the value of those rights, so arrived at, on the assumptions specified in sub-paragraph (6).
- (5) For the purposes of sub-paragraph (4)(a) “the relevant indexation percentage”, in relation to a relevant event, means whichever is the greatest of—
- (a) the percentage by which an amount would be increased if it were increased for the period beginning with 6th April 2006 and ending with the date on which the relevant event occurs at an annual rate of 5%,
- (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, and
- (c) the percentage by which the retail prices index for the month in which the relevant event occurs is higher than that for April 2006.
- (6) The assumptions referred to in sub-paragraph (4)(b) are—
- (a) that the individual’s age on 5th April 2006 were what it is at the time of the first relevant event (so that neither paragraph 8(6) nor section 277(a) applies in arriving at what would be the value of the rights under paragraph 8), and
- (b) that the amount of the earnings which would have fallen to be taken into account under the arrangement for calculating the amount of benefits payable to or in respect of the individual (if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on that date) were the lesser of the two amounts specified in sub-paragraph (7).
- (7) The amounts referred to in sub-paragraph (6)(b) are—
- (a) the current amount of the relevant pensionable earnings immediately before the first relevant event, and
- (b) the post-commencement earnings limit (see paragraphs 16 and 17).
- (8) But sub-paragraph (6)(b) applies in relation to an arrangement under a pension scheme within paragraph 1(1)(c) or (e) as if for “the lesser of the two amounts specified in sub-paragraph (7)” there were substituted “the amount specified in sub-paragraph (7)(a)”.
- (9) In this paragraph “the relevant pensionable earnings” means the description of earnings (or the portion of the description of earnings) of the individual by reference to which the amount of benefits payable to or in respect of the individual would have fallen to be calculated if the individual became entitled to the present payment of benefits in respect of the rights under the arrangement on 5th April 2006.
- (10) For the purposes of sub-paragraph (7)(a) “the current amount” of the relevant pensionable earnings immediately before the first relevant event is the amount of the relevant pensionable earnings which, at that time, would fall to be taken into account in calculating the amount of benefits payable to or in respect of the individual under the arrangement if the individual became entitled to the present payment of benefits at that time (but subject to sub-paragraph (11)).
- (11) If at that time the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, the current amount of the relevant pensionable earnings at that time includes what would be likely to be included in that amount if the individual were not so absent.

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### Textual Amendments

**F82** Words in Sch. 36 para. 15(2) inserted (retrospectively) by [Finance Act 2007 \(c. 11\)](#), [Sch. 20 paras. 19\(2\), 24\(3\)](#)

- 16 (1) This paragraph specifies the post-commencement earnings limit if the individual was on 5th April 2006 a person in relation to whom section 590C of ICTA (earnings cap) had effect in relation to any pension scheme under which the arrangement or any other arrangement related to the arrangement was made.
- (2) The post-commencement earnings limit is the lesser of amount A and amount B.
- (3) Amount A is 7.5% of the standard lifetime allowance when the first relevant event occurs.
- (4) Amount B is the amount of the individual's employment income from the employment to which the arrangement relates for the best period of 12 months during the appropriate three year period.
- (5) The appropriate three year period is the period of three years ending with the time when the first relevant event occurs.
- (6) A period of 12 months during the appropriate three year period is the best period of 12 months during the appropriate three year period if the amount of the individual's employment income from the employment to which the arrangement relates is greater for that period of 12 months than for any other period of 12 months during the appropriate three year period.
- (7) For the purposes of this paragraph and paragraph 17 the amount of the individual's employment income includes, in relation to any time when the individual is absent from work in connection with pregnancy, maternity, paternity or adoption, what would be likely to be included in that amount if the individual were not so absent.
- 17 (1) This paragraph specifies the post-commencement earnings limit in any other case.
- (2) The post-commencement earnings limit is—
- (a) if amount B is not greater than amount A, amount B, and
- (b) otherwise, amount C.
- (3) Amount A and amount B have the same meanings as in paragraph 16.
- (4) Amount C is the greater of—
- (a) amount A, and
- (b) amount D.
- (5) Amount D is—

$$\frac{ETY}{3}$$

where ETY is the amount of the individual's employment income from the employment to which the arrangement relates for the appropriate three year period (within the meaning of paragraph 16).



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*Pre-commencement pension credits*

- 18 (1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where before 6th April 2006 the individual has acquired rights under a pension scheme within paragraph 1 (1) by virtue of having become entitled to a pension credit.
- (2) The lifetime allowance enhancement factor is the pre-commencement pension credit factor.
- (3) The pre-commencement pension credit factor is—

$$\frac{\text{IAPC}}{\text{SLA}}$$

where—

IAPC is the amount which is the appropriate amount for the purposes of section 29 (1) of WRPA 1999 or Article 26 (1) of WRP(NI)O 1999 in relation to the pension credit, as increased by the percentage specified in sub-paragraph (4), and

SLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (4) The percentage is the percentage by which the retail prices index for April 2006 is greater than that for the month in which the rights were acquired.
- (5) This paragraph does not apply in the case of an individual if paragraph 7 (primary protection) applies in relation to the individual.
- (6) This paragraph only applies if notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

*Individuals permitted to take pension before normal minimum pension age*

- 19 (1) This paragraph applies where a benefit crystallisation event occurs in relation to an individual who is a member of a registered pension scheme—
- (a) in protected circumstances, and
- (b) before the individual reaches normal minimum pension age.
- (2) What would otherwise be the individual's lifetime allowance is to be reduced by the relevant percentage.
- (3) A benefit crystallisation event occurs in protected circumstances if—
- (a) paragraph 22 or 23 (right to take pension before normal minimum pension age) applies to the individual and the pension scheme,
- (b) the individual's protected pension age (see paragraph 22(8) or 23(8)) is less than 50, and
- (c) the pension scheme is not prescribed by regulations made by the Board of Inland Revenue.
- (4) The relevant percentage is—

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$$Y \times 2.5$$

where Y is the number of complete years falling between the date on which the benefit crystallisation event occurs and the date on which the individual will reach normal minimum pension age.

- (5) Sub-paragraph (6) applies where, after the occurrence in relation to the individual of a benefit crystallisation event in relation to which this paragraph has had effect, another benefit crystallisation event occurs in relation to the individual and the pension scheme.
- (6) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, section 219 (availability of individual's lifetime allowance) applies as if the amount crystallised were the available amount of the individual's lifetime allowance at that time.

*Pre-commencement pensions*

- 20 (1) This paragraph makes provision about an individual who, on 5th April 2006, has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions.
- (2) Section 219 (availability of individual's lifetime allowance) applies as if, immediately before the first benefit crystallisation event occurring in relation to the individual—
  - (a) a benefit crystallisation event had occurred in relation to the individual, and
  - (b) the amount crystallised was the value of the individual's pre-commencement pension rights immediately before the benefit crystallisation event.
- (3) The value of the individual's pre-commencement pension rights at any time is—

$$25 \times ARP$$

where (subject to sub-paragraph (4)) ARP is an amount equal to—

- (a) the annual rate at which the relevant existing pension is payable to the individual at that time, or
  - (b) if more than one relevant existing pension is payable to the individual at that time, the aggregate of the annual rates at which each of the relevant existing pensions is so payable.
- (4) In the case of unsecured pension or alternatively secured pension ARP is the maximum amount that may be paid in the unsecured pension year or alternatively secured pension year in which the time falls in accordance with pension rule 5 or pension rule 7 (see section 165).
  - (5) In this paragraph “relevant existing pension” has the same meaning as in paragraph 10(2); and paragraph 10(4) and (5) operates for the purposes of this paragraph for determining the annual rate at which a relevant existing pension is payable at any time (treating the references there to 5th April 2006 as to that time).

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### PART 3

#### PRE-COMMENCEMENT BENEFIT RIGHTS

##### *Rights to take pension before normal minimum pension age*

- 21 (1) If paragraph 22 or 23 applies in relation to a registered pension scheme and a member of the pension scheme, this Part of this Act (except for section 218(6) and paragraph 19) has effect in relation to the member and the pension scheme as if references to normal minimum pension age were to the member's protected pension age.
- (2) Paragraphs 22(8) and 23(8) define the member's protected pension age.
- 22 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—
- (a) the pension scheme is a protected pension scheme, and
  - (b) the retirement condition is met in relation to the member and the pension scheme.
- (2) A pension scheme is a protected pension scheme if condition A or condition B is met.
- (3) Condition A is met if—
- (a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
  - (b) the entitlement condition is met in relation to the member and the pension scheme.
- (4) The entitlement condition is met in relation to the member and the pension scheme if—
- (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to a pension from an age of less than 55,
  - (b) the rules of the pension scheme on 10th December 2003 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
  - (c) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.
- (5) Condition B is met if the member is a member of the pension scheme as a result of a block transfer to it from a pension scheme (“the original pension scheme”) in relation to which condition A is met.
- (6) A transfer is a block transfer if—
- (a) it involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the member and at least one other member of that pension scheme, and
  - (b) before the transfer the member was not a member of the pension scheme to which the transfer is made.
- (7) The retirement condition is met in relation to the member and the pension scheme if—
- (a) the member becomes entitled to all the pensions payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date, and

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- (b) the member is not employed by a sponsoring employer after becoming entitled to a pension under the pension scheme.
- (8) The member's protected pension age is the age from which the member had an actual or prospective right to a pension under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).
- (9) But this paragraph does not have effect so as to give the member a protected pension age of more than 50 at any time before 6th April 2010.
- 23 (1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if—
  - (a) the pension scheme is a protected pension scheme, and
  - (b) the retirement condition is met in relation to the member and the pension scheme.
- (2) A pension scheme is a protected pension scheme if condition A or condition B is met.
- (3) Condition A is met if—
  - (a) the pension scheme was within paragraph (f) or (g) of paragraph 1(1), and
  - (b) the entitlement condition is met in relation to the member and the pension scheme.
- (4) The entitlement condition is met in relation to the member and the pension scheme if—
  - (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to a pension from an age of less than 50, and
  - (b) the member's occupation was on that date (or had been) one prescribed by regulations made by the Board of Inland Revenue.
- (5) Condition B is met if the member is a member of the pension scheme as a result of a block transfer to it from a pension scheme ("the original pension scheme") in relation to which condition A is met.
- (6) "Block transfer" has the same meaning as in paragraph 22(6).
- (7) The retirement condition is met in relation to the member and the pension scheme if the member becomes entitled to all the pensions payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date.
- (8) The member's protected pension age is the age from which the member had an actual or prospective right to a pension under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

*Lump sum rights exceeding £375,000: primary and enhanced protection*

- 24 (1) If the lump sum condition and the registration condition are met in relation to an individual—
  - (a) paragraphs 27 to 29 (which modify Schedule 29 in relation to pension commencement lump sums), and
  - (b) paragraph 30 (which makes provision about scheme chargeable payments), apply in relation to the individual.

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- (2) The lump sum condition is met if on 5th April 2006 the amount of an individual's total lump sum rights exceeds £375,000 (25% of the standard lifetime allowance for the tax year 2006-07).
  - (3) Paragraph 25 defines the amount of an individual's total lump sum rights on that date.
  - (4) The registration condition is met if either or both of the notice requirements is met.
  - (5) The first notice requirement is met if notice of intention to rely on paragraph 7 (primary protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.
  - (6) The second notice requirement is met if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in relation to the individual.
- 25 (1) The amount of an individual's total lump sum rights on 5th April 2006 is—

$$\frac{\text{VCPR}}{4} + \text{VULSR}$$

where—

VCPR is the value of the individual's relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10, and

VULSR is the value of the individual's relevant uncrystallised lump sum rights on that date.

- (2) The value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 is the aggregate value of the individual's uncrystallised lump sum rights on that date under each relevant pension arrangement relating to the individual.
- (3) An uncrystallised lump sum right is a right to a lump sum which on 5th April 2006 is prospective (rather than actual).
- (4) An arrangement is a "relevant pension arrangement" if it is an arrangement under a pension scheme within paragraph 1(1).
- (5) The value of the individual's uncrystallised lump sum rights under an arrangement on 5th April 2006—
  - (a) in the case of an arrangement under a pension scheme falling within paragraph 1(1)(f), is 25% of the value of the funds held for the purposes of the arrangement on that date, and
  - (b) in the case of any other arrangement, is an amount calculated in accordance with sub-paragraph (6).
- (6) The amount is the amount of any lump sum to which the individual would have been entitled under the arrangement on 5th April 2006 on the assumption that the individual became entitled to the present payment of a lump sum under the arrangement on that date.
- (7) In calculating an amount in accordance with sub-paragraph (6) the valuation assumptions apply but as if the reference to such age (if any) as must have been

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- reached to avoid any reduction in benefits on account of age in paragraph (a) of section 277 were to the relevant age; and for this purpose “the relevant age” is—
- (a) if on 10th December 2003 the terms of the arrangement made provision for a reduction in the amount of benefits payable in respect of rights under the arrangement on account of the holder of the rights being below a particular age, that age, and
  - (b) otherwise, 60.
- 26 (1) This paragraph applies if any of the individual’s uncrystallised lump sum rights on 5th April 2006 are rights under one or more arrangements under a pension scheme or schemes within paragraph 1(1)(a) to (d).
- (2) The value of the individual’s uncrystallised lump sum rights on 5th April 2006 under the arrangement, or the aggregate of the values of the individual’s uncrystallised lump sum rights on 5th April 2006 under such of the arrangements as relate to a particular employment, is the lower of—
- (a) the value, or the aggregate of the values, calculated under paragraph 25, and
  - (b) the maximum permitted lump sum.
- (3) “The maximum permitted lump sum” means the maximum lump sum that could be paid to the individual on 5th April 2006 under the arrangement or arrangements if it or they were made under a pension scheme within paragraph 1(1)(a) without giving the Board of Inland Revenue grounds for withdrawing approval of the pension scheme under section 591B of ICTA.
- (4) For the purposes of sub-paragraph (3) it is to be assumed—
- (a) if the individual was in the employment to which the arrangement or arrangements relates or relate on 5th April 2006, that the individual left the employment on that date, and
  - (b) if the individual had not reached the lowest age at which a lump sum may be paid under a pension scheme within paragraph 1(1)(a) to a person in good health without giving the Board of Inland Revenue grounds for withdrawing the approval of the pension scheme, that that fact would not give the Board such grounds.
- (5) Whether an arrangement relating to an individual relates to an employment is to be determined in accordance with paragraph 9(6).
- 27 (1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraph 2 of Schedule 29 applies in relation to the individual with the following modifications.
- (2) If the value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 is nil.
- (3) Otherwise, paragraph 2 applies as if for sub-paragraphs (5) to (8) there were substituted—
- “(5) If sub-paragraph (2) does not apply, the permitted maximum is the applicable amount, calculated in accordance with paragraph 3.”
- 28 (1) If paragraph 12 (enhanced protection) does not apply in relation to the individual, paragraph 2 of Schedule 29 applies in relation to the individual with the following modifications.

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- (2) If the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26) was nil, the permitted maximum under paragraph 2 is nil.
- (3) Otherwise, paragraph 2 applies as if for sub-paragraphs (5) to (7) there were substituted—
- “(5) If sub-paragraph (2) does not apply, the permitted maximum is the available portion of the member's lump sum allowance.
- (6) The available portion of the member's lump sum allowance is—

## VULSR – APCLS

where—

VULSR is the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 (calculated in accordance with paragraphs 25 and 26 of Schedule 36), as adjusted under sub-paragraph (6A), and

APCLS is the aggregate of the amounts of each pension commencement lump sum to which the individual has previously become entitled, as adjusted under sub-paragraph (7) (or, if the individual has not previously become entitled to a pension commencement lump sum, is nil).

- (6A) The adjustment referred to in the definition of VULSR is the multiplication of the value of the individual's relevant uncrystallised lump sum rights on 5th April 2006 by—

$$\frac{\text{CSLA}}{\text{FSLA}}$$

where—

CSLA is the current standard lifetime allowance, and

FSLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

- (7) The adjustment of the amount of a pension commencement lump sum to which the individual has previously become entitled referred to in the definition of APCLS is the multiplication of the amount by—

$$\frac{\text{CSLA}}{\text{PSLA}}$$

where—

CSLA is the current standard lifetime allowance, and

PSLA is the standard lifetime allowance at the time the individual became entitled to the lump sum.”

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29 (1) If (and for so long as) paragraph 12 (enhanced protection) applies in relation to the individual, paragraph 3 of Schedule 29 (applicable amount) applies with the following modifications.

(2) Paragraph 3 applies as if for sub-paragraphs (1) to (3) there were substituted—

“(1) Where the member becomes entitled to income withdrawal, the applicable amount is—

$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{AD})$$

where—

VULSR is the value of the individual’s relevant uncrystallised lump sum rights on 5th April 2006, calculated in accordance with paragraphs 25 and 26 of Schedule 36,

VUR is the value of the individual’s uncrystallised pension rights on 5th April 2006, calculated in accordance with paragraphs 8 and 9 of that Schedule,

LS is the lump sum paid, and

AD is the aggregate of the amount of the sums, and the market value of the assets, designated as available for the payment of unsecured pension on that occasion.

(2) For the purposes of sub-paragraph (1) there is to be deducted from the aggregate of the lump sum and the amount of the sums and the market value of the assets designated as available for the payment of unsecured pension so much (if any) of that amount as represents rights which are attributable to a disqualifying pension credit.

(3) Where the member becomes entitled to a lifetime annuity, the applicable amount is—

$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{APP})$$

where—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and

APP is the annuity purchase price.”

(3) Paragraph 3 applies as if for sub-paragraphs (5) to (7) there were substituted—

“(5) There is to be deducted from the aggregate of the amount of the lump sum and the annuity purchase price—

(a) if the annuity is purchased (in whole or in part) by the application of sums or assets representing the whole or part of the member’s unsecured pension fund, the aggregate of the amount of those sums and the market value of those assets, and



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- (b) in any case, so much (if any) of the aggregate of the lump sum and the annuity purchase price as represents rights which are attributable to a disqualifying pension credit.

- (6) Where the member becomes entitled to a scheme pension, the applicable amount is—

$$\frac{\text{VULSR}}{\text{VUR}} \times (\text{LS} + \text{AC})$$

but subject to sub-paragraph (8).

- (7) In sub-paragraph (6)—

VULSR, VUR and LS have the same meaning as in sub-paragraph (1), and

AC is the amount crystallised by reason of the member becoming entitled to the pension (see section 216).”

- 30 (1) Any part of a lump sum falling within paragraph 1 (1) of Schedule 29 which—
  - (a) under paragraph 1(2) of that Schedule is not a pension commencement lump sum (because the lump sum exceeds the permitted maximum), and
  - (b) is an unauthorised payment,is to be treated as exempt from being scheme chargeable (under section 241(2)) if the condition in sub-paragraph (2) is met.
- (2) The condition is that it would not have been an unauthorised payment if—
  - (a) paragraphs 27 and 29 (in the case of an individual in relation to whom paragraph 12 applies), or
  - (b) paragraph 28 (in the case of an individual in relation to whom paragraph 12 does not apply),had not applied.

*Entitlement to lump sums exceeding 25% of uncrystallised rights*

- 31 (1) If the pension condition is met in relation to an individual and a registered pension scheme which is a protected pension scheme, the provisions of Schedule 29 relating to pension commencement lump sums apply in relation to the individual and the pension scheme with the modifications specified in paragraph 34 (but subject to sub-paragraph (2)).
- (2) Those provisions do not apply with those modifications if the lump sum condition and registration condition in paragraph 24 are met.
- (3) The pension condition is that the individual becomes entitled to all the pensions payable to the individual under arrangements under the pension scheme (to which the individual did not have an actual entitlement on or before 5th April 2006) on the same date.
- (4) A registered pension scheme is a protected pension scheme if condition A or condition B is met.

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- (5) Condition A is met if—
- (a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
  - (b) on 5th April 2006 the lump sum percentage of the individual’s uncrystallised rights under the pension scheme exceeded 25%.
- (6) The lump sum percentage of an individual’s uncrystallised pension rights under a pension scheme on 5th April 2006 is—

$$\frac{\text{VULSR}}{\text{VUR}} \times 100$$

where—

VULSR is the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32, and

VUR is the value of the individual’s uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33.

- (7) Condition B is met if the individual is a member of the pension scheme as a result of a block transfer to it from a pension scheme (“the original pension scheme”) in relation to which condition A is met.
- (8) “Block transfer” has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.
- (9) Where a pension scheme is a protected pension scheme because condition B is met, Schedule 29 as modified by paragraph 34 applies as if the protected pension scheme were the same pension scheme as the original pension scheme.
- 32 (1) Subject to sub-paragraph (2), the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual’s uncrystallised lump sum rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 25(5), on that date.
- (2) If the pension scheme is a relevant pension scheme, the value of the individual’s uncrystallised lump sum rights on 5th April 2006 under an arrangement—
- (a) which relates to a particular employment, and
  - (b) in relation to which the excess lump sum condition is met (see sub-paragraph (5) or (6)),
- is the amount arrived at in accordance with sub-paragraph (7) or (8).
- (3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).
- (4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).
- (5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—

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- (a) the value of the individual's uncrystallised lump sum rights under the arrangement calculated in accordance with paragraph 25(5), exceeds
  - (b) the amount arrived at in relation to the arrangement in accordance with paragraph 26.
- (6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess lump sum condition is met in relation to the arrangement if—
- (a) the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5), exceeds
  - (b) the amount arrived at in relation to those arrangements in accordance with paragraph 26;
- and the amount by which the aggregate of those values exceeds that amount is the "lump sum excess".
- (7) Where the excess lump sum condition is met by virtue of sub-paragraph (5), the value of the individual's uncrystallised lump sum rights under the arrangement is the amount arrived at in accordance with paragraph 26.
- (8) Where the excess lump sum condition is met by virtue of sub-paragraph (6), the value of the individual's uncrystallised lump sum rights under the arrangement is the value of those rights calculated in accordance with paragraph 25(5), less the appropriate proportion of the lump sum excess.
- (9) The appropriate proportion of the lump sum excess is—

$$\frac{V}{AV}$$

where—

V is the value of the individual's uncrystallised lump sum rights under the arrangement, calculated in accordance with paragraph 25(5), and

AV is the aggregate of the values of the individual's uncrystallised lump sum rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 25(5).

- 33 (1) Subject to sub-paragraph (2), the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006 is the aggregate of the value of the individual's uncrystallised rights under each arrangement in respect of the individual under the pension scheme, calculated in accordance with paragraph 8(5).
- (2) If the pension scheme is a relevant pension scheme, the value of the individual's uncrystallised rights on 5th April 2006 under an arrangement—
- (a) which relates to a particular employment, and
  - (b) in relation to which the excess rights condition is met (see sub-paragraph (5) or (6)),
- is the amount arrived at in accordance with sub-paragraph (7) or (8).

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- (3) A pension scheme is a relevant pension scheme if it falls within paragraph 1(1)(a) to (d).
- (4) Whether an arrangement relating to the individual relates to a particular employment is to be determined in accordance with paragraph 9(6).
- (5) If no other arrangement relating to the individual under a relevant pension scheme relates to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—
- (a) the value of the individual’s uncrystallised rights under the arrangement calculated in accordance with paragraph 8(5), exceeds
  - (b) the amount arrived at in relation to the arrangement in accordance with paragraph 9(3).
- (6) If one or more other arrangements relating to the individual under a relevant pension scheme or relevant pension schemes relates or relate to the employment to which the arrangement relates, the excess rights condition is met in relation to the arrangement if—
- (a) the aggregate of the values of the individual’s uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5), exceeds
  - (b) the amount arrived at in relation to those arrangements in accordance with paragraph 9(3);
- and the amount by which the aggregate of those values exceeds that amount is the “rights excess”.
- (7) Where the excess rights condition is met by virtue of sub-paragraph (5), the value of the individual’s uncrystallised rights under the arrangement is the amount arrived at in accordance with paragraph 9(3).
- (8) Where the excess rights condition is met by virtue of sub-paragraph (6), the value of the individual’s uncrystallised rights under the arrangement is the value of those rights calculated in accordance with paragraph 8(5), less the appropriate proportion of the rights excess.
- (9) The appropriate proportion of the rights excess is—

$$\frac{V}{AV}$$

where—

V is the value of the individual’s uncrystallised rights under the arrangement, calculated in accordance with paragraph 8(5), and

AV is the aggregate of the values of the individual’s uncrystallised rights under the arrangement and the other arrangement or arrangements, calculated in accordance with paragraph 8(5).

- 34 (1) Schedule 29 applies with the following modifications.

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(2) Paragraph 2 applies as if the reference in sub-paragraph (2) to the arrangement under which the member becomes entitled to the relevant pension were to the pension scheme and for sub-paragraphs (5) to (8) there were substituted—

“(5) If paragraph 2(2) does not apply and relevant benefit accrual has occurred under the pension scheme in relation to the individual after 5th April 2006, the permitted maximum is—

$$\left( \text{VULSR} \times \frac{\text{CSLA}}{\text{FSLA}} \right) + \text{ALSA}$$

(6) If paragraph 2(2) does not apply and relevant benefit accrual has not occurred under the pension scheme in relation to the individual after 5th April 2006, the permitted maximum is—

$$\text{VULSR} \times \frac{\text{CSLA}}{\text{FSLA}}$$

(7) In this paragraph—

VULSR is the value of the individual’s uncrystallised lump sum rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 32 of Schedule 36,

CSLA is the current standard lifetime allowance,

FSLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and

ALSA is the additional lump sum amount.

(7A) The additional lump sum amount is—

$$\frac{\text{LS} + \text{AC} - \left( \text{VUR} \times \frac{\text{CSLA}}{\text{FSLA}} \right)}{4}$$

where—

LS is the lump sum paid (but this is subject to sub-paragraph (7B)),  
AC is the amount crystallised on the individual becoming entitled to the pension in connection with which the lump sum is paid (see section 216) (but this is subject to sub-paragraph (7B)), and

VUR is the value of the individual’s uncrystallised rights under the pension scheme on 5th April 2006, calculated in accordance with paragraph 33 of Schedule 36.

(7B) Any part of the lump sum and the amount crystallised which represents rights attributable to a disqualifying pension credit is to be disregarded.

(7C) Paragraph 13 of Schedule 36 specifies when relevant benefit accrual occurs in relation to an individual.”

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- (3) Omit paragraph 3 (applicable amount for pension commencement lump sums).

*Winding-up lump sums paid by former approved superannuation funds*

- 35 (1) For the tax year 2006-07, Schedule 29 (authorised lump sums) applies in relation to former approved superannuation funds with the modifications specified in sub-paragraphs (2) and (3).
- (2) Paragraph 10 (winding-up lump sums) applies as if the following were omitted—
- (a) sub-paragraph (1)(c) and (d),
  - (b) sub-paragraph (2), and
  - (c) sub-paragraph (3).
- (3) Paragraph 11 (lifetime allowance excess lump sums) applies as if at the end of paragraph (b) there were inserted “ or a winding-up lump sum ”.
- (4) Section 636B of ITEPA 2003 (taxation of trivial commutation and winding-up lump sums) applies in relation to a winding-up lump sum paid by a former approved superannuation fund in the tax year 2006-07 as if—
- (a) in subsection (2), after “equal to” there were inserted “ 75% of ”, and
  - (b) subsection (3) were omitted.
- (5) “Former approved superannuation fund” has the meaning given by paragraph 1(3).

*Right to payment of lump sum death benefit*

- 36 (1) This paragraph applies to a member of a registered pension scheme if on 5th April 2006—
- (a) the pension scheme is within any of paragraphs (a) to (e) of paragraph 1(1),
  - (b) the member has an actual (rather than a prospective) right to a pension under an arrangement under the pension scheme, and
  - (c) under the arrangement a lump sum death benefit is payable if the member dies within the guarantee period.
- (2) The guarantee period is the period of five years beginning with the day on which the member became entitled to the pension or, if later, the day on which the pension was first paid.
- (3) If the member dies after having reached the age of 75 and before the end of the guarantee period—
- (a) paragraph 14 of Schedule 29 (pension protection lump sum death benefit),
  - (b) paragraph 16 of that Schedule (annuity protection lump sum death benefit), and
  - (c) paragraph 17 of that Schedule (unsecured pension fund lump sum death benefit),
- apply in relation to the member and the arrangement with the following modifications.
- (4) Each of those paragraphs applies as if sub-paragraph (1)(a) were omitted.
- (5) Paragraph 14 (1) applies as if paragraph (d) were omitted.

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- (6) Paragraph 14(2) applies as if the reference to the pension protection limit were to the transitional protection limit.
- (7) Paragraph 16(2) applies as if the reference to the annuity protection limit were to the transitional protection limit.
- (8) Paragraph 17(3) applies in relation to a lump sum falling within paragraph 17 (1) as if the reference to the permitted maximum were to the transitional protection limit.
- (9) Section 206 (1) (special lump sum death benefits charge) does not apply to any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit paid by virtue of subparagraphs (3) to (8).
- (10) If the member dies before having reached the age of 75 and before the end of the guarantee period—
  - (a) section 206 (1) does not apply to so much of any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit, and
  - (b) if the arrangement is a defined benefits arrangement, paragraph 14(1)(d) of Schedule 29 is to be treated as satisfied in relation to so much of the lump sum death benefit paid under the arrangement as does not exceed the transitional protection limit.
- (11) The transitional protection limit is—

## $P - TPLS$

where—

$P$  is the amount of pension to which (had the member lived) the member would have been entitled under the arrangement in respect of the period beginning with the day of the member's death and ending with the last day of the guarantee period, and

$TPLS$  is the amount of any pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit previously paid in respect of the pension.

### PART 4

#### OTHER PROVISIONS

##### *Pre-commencement ill-health insurance contracts*

- 37 (1) Payments under protected ill-health insurance contracts are not unauthorised member payments.
- (2) Ill-health insurance contracts are contracts providing insurance against a risk relating to non-payment by a member of a pension scheme of contributions under the pension scheme.

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- (3) An ill-health insurance contract is protected if it was made before 6th April 2006 under—
- (a) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA before 6th April 2001, or
  - (b) an annuity contract or trust scheme approved under section 620 or 621 of ICTA or a substituted contract within the meaning of section 622(3) of ICTA.

*Pre-commencement loans to sponsoring employers*

- 38 (1) This paragraph applies to a loan if—
- (a) the loan was made before 6th April 2006 by an occupational pension scheme which becomes a registered pension scheme on that date,
  - (b) had this Part had been in force and had the pension scheme been a registered pension scheme at the time when the loan was made, it would have been a loan to a sponsoring employer, and
  - (c) the date by which the total amount owing (including interest) must be paid is on or after 6th April 2006.
- (2) If on or after 6th April 2006 there is no alteration in the repayment terms, section 179 (authorised employer loan) does not apply in relation to the loan.
- (3) If on or after 6th April 2006 there is an alteration in the repayment terms, section 179 applies as if, on the date of the alteration, the pension scheme made a loan to the sponsoring employer of an amount equal to the amount owing (including interest) on that date.
- (4) The postponement of the date by which the total amount owing (including interest) must be paid is not an alteration in the repayment terms if—
- (a) an amount is outstanding on the date by which the total amount owing should have been paid,
  - (b) the postponement is for a period not exceeding five years, and
  - (c) there has been no previous postponement on or after 6th April 2006.

*Retirement annuity contracts: carry-back of pre-commencement contributions*

- 39 The repeal by this Act of section 619(4) of ICTA (election on or before 31st January following tax year in which retirement annuity contract premium is paid to treat premium as paid in earlier tax year) does not prevent the making of an election under that provision (in relation to a premium paid in the tax year 2005-06) at any time on or before 31st January 2007.

*Members' contributions to pre-commencement retirement annuity contracts*

- 40 (1) Relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not required to be given in accordance with section 192 (relief at source).
- (2) If relief in respect of contributions made by a member under pre-commencement retirement annuity arrangements is not given in accordance with section 192, relief in respect of the contributions is to be given in accordance with section 194 (relief on making of claim).



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- (3) “Pre-commencement retirement annuity arrangements” means—
- (a) an annuity contract or trust scheme approved under section 620 or 621 of ICTA, or
  - (b) a substituted contract within the meaning of section 622(3) of ICTA.

*Employers' contributions relieved before 6th April 2006*

- 41 To the extent that any contribution paid by an employer under a registered pension scheme was—
- (a) allowed to be deducted for the purposes of [F83 Part 2 of ITTOIA 2005 (trading income) or] Case I or II of Schedule D,
  - (b) deductible under section 75 of ICTA (expenses of management: companies with investment business), or
  - (c) brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),
- for a period beginning before 6th April 2006, it is not allowed to be so deducted, so deductible, or available to be so brought into account for that or any other period in accordance with section 196 (relief for employers in respect of contributions paid).

**Textual Amendments**

**F83** Words in Sch. 36 para. 41(a) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 656\(2\)](#) (with Sch. 2)

*Spreading of employer's contributions*

- 42 The power of the Board of Inland Revenue under section 592(6) of ICTA to direct that a sum paid under an exempt approved scheme otherwise than by way of ordinary annual contribution be treated as an expense to be spread over such period of years as the Board think fit continues to apply in relation to sums paid before 6th April 2006.

*Taxation of annuities paid under pre-commencement retirement annuity contracts*

- 43 (1) Chapter 9 of Part 9 of ITEPA 2003 (taxation of annuities paid under pre-commencement retirement annuity contracts) continues to have effect until such date as the Treasury may by order appoint.
- (2) Chapter 5A of that Part (as inserted by Schedule 31) does not have effect in relation to any annuity to which Chapter 9 applies by virtue of sub-paragraph (1).
- (3) Section 683 of ITEPA 2003 (PAYE income) has effect accordingly.
- (4) An order under sub-paragraph (1) may include any appropriate transitional provision.

*Taxation of pensions accruing (but not taxed) pre-commencement and paid or received post-commencement*

- 44 (1) If an amount which accrued but was not paid before 6th April 2006 would have constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities) had it been paid before that date, it is to

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be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is paid.

- (2) If an amount which accrued but was not received before 6th April 2006 would have constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities) had it been received before that date, it is to be treated for the purposes of Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) as if it accrues when it is received.

*Pensions taxed pre-commencement but accruing post-commencement*

- 45 (1) If an amount which was paid but had not accrued before 6th April 2006 constituted taxable pension income under Chapter 7 of Part 9 of ITEPA 2003 (former approved superannuation fund annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.
- (2) If an amount which was received but had not accrued before 6th April 2006 constituted taxable pension income under section 596 of ITEPA 2003 (personal pension annuities), it does not also constitute taxable pension income under Chapter 5A of Part 9 of ITEPA 2003 (as inserted by Schedule 31) when it accrues.

*Application of PAYE to certain annuities in payment at commencement*

- 46 (1) Taxable pension income for the tax year 2006-07 or any subsequent tax year determined in accordance with section 612 of ITEPA 2003 for an annuity to which this paragraph applies is to be treated as being PAYE pension income for the tax year by virtue of section 683(3) of that Act (PAYE income).
- (2) This paragraph applies to an annuity in payment on 5th April 2006 which—
- (a) would be within paragraph 1 (1) but for paragraph 2, or
  - (b) would be within paragraph 1(1)(d) if the annuity did not provide for the immediate payment of benefits.

*Authorised surplus payments charge: pre-19th March 1986 winding-up*

- 47 Section 207 (authorised surplus payments charge) does not apply to any payment made in pursuance of the winding-up of a pension scheme if the winding-up commenced before 19th March 1986.

*Annual allowance charge: post-commencement contributions to discharge pre-commencement unfunded promises*

- 48 (1) This paragraph applies where, during the period beginning with 6th April 2006 and ending with 7th July 2006, an employer of an individual makes a relevant consolidation contribution in respect of the individual under an arrangement under a registered pension scheme relating to the individual.
- (2) The pension input amount in respect of the arrangement during the pension input period of the arrangement ending in the tax year 2006-07 is to be reduced by the amount of the contribution.

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- (3) “Relevant consolidation contribution” means a contribution made by way of discharge of any liability incurred by the employer before 6th April 2006 to pay any pension or lump sum to or in respect of the individual.

*Annual allowance charge: enhanced protection*

- 49 (1) This paragraph applies if notice of intention to rely on paragraph 12 (enhanced protection) is given to the Inland Revenue in accordance with regulations under that paragraph in the case of an individual.
- (2) Sections 227 to 238 (annual allowance charge) do not apply in relation to the individual for any tax year if that paragraph applies in relation to the individual throughout the tax year.

*Saving of sections 605 and 651A of ICTA*

- 50 The repeal by this Act of sections 605 and 651A of ICTA (information powers) does not affect the operation of those sections, or regulations under them, in relation to times before 6th April 2006.

*Individuals with pre-commencement entitlement to corresponding relief*

- 51 (1) This paragraph applies where the Board of Inland Revenue allow contributions made by an individual under a pension scheme as deductions under Chapter 2 of Part 5 of ITEPA 2003 for the tax year 2005-06 in accordance with section 355 of that Act (deductions for corresponding payments by non-domiciled employees with foreign employers).
- (2) Where the individual makes contributions under the pension scheme for any subsequent tax year, the Board of Inland Revenue may allow the contributions as deductions under Chapter 2 of Part 5 of that Act if, as well as the Board of Inland Revenue being satisfied that the conditions in section 355 of that Act are met, the scheme manager complies with any prescribed benefit crystallisation information requirements imposed on the scheme manager.
- (3) Schedule 34 (non-UK schemes: application of certain charges) applies in relation to the pension scheme and the individual as if allowing the contributions as deductions under Chapter 2 of Part 5 of ITEPA 2003 by virtue of sub-paragraph (2) were the giving of relief by virtue of Schedule 33 (overseas pension schemes: migrant member relief).
- (4) “Prescribed benefit crystallisation information requirements” means requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information relating to events that are benefit crystallisation events in relation to the individual.
- (5) The references in sub-paragraphs (2) and (3) to the pension scheme include a pension scheme to which there has been a block transfer from the pension scheme on or after 6th April 2006.
- (6) “Block transfer” has the same meaning as in paragraph 22(6), but treating the references there to the member as references to the individual.

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*Continuing operation of section 392 of ITEPA 2003*

- 52 Section 392 of ITEPA 2003 (non-approved schemes: relief where no benefits are paid or payable) continues to have effect in relation to a sum charged to tax by virtue of section 386 of ITEPA 2003 or section 595 of ICTA (charges on payments to schemes) before 6th April 2006.

*Benefits taxable under Chapter 2 of Part 6 of ITEPA  
 2003: contributions taxed pre-commencement*

- 53 (1) Paragraph 54 or 55 has effect where—
- (a) section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) operates (or would otherwise operate) by reason of the provision of a lump sum under an employer-financed retirement benefits scheme on or after 6th April 2006, and
  - (b) before that date an employer has paid any sum or sums, with a view to the provision of benefits under the scheme, in respect of which an employee is taxed.
- (2) For the purposes of sub-paragraph (1)(a) section 394 of ITEPA 2003 operates if—
- (a) an amount counts as employment income of an individual under that section, or
  - (b) the person who is, or persons who are, the responsible person in relation to the scheme is or are chargeable [<sup>F84</sup>to income tax under subsection (2) of] that section.
- (3) For the purposes of sub-paragraph (1)(b) an employee is taxed in respect of a sum or sums if—
- (a) the employee is assessed to tax by virtue of section 595 (1) of ICTA (charges on payments) in respect of the sum or sums, or
  - (b) the sum or sums counts or count as employment income of the employee under section 386 (1) of ITEPA 2003 (charges on payments).
- (4) It is to be assumed, unless the contrary is shown, that neither paragraph 54 nor paragraph 55 has effect.

**Textual Amendments**

**F84** Words in Sch. 36 para. 53(2)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 656\(3\)](#) (with Sch. 2)

- 54 (1) This paragraph has effect if—
- (a) all of the income and gains accruing to the scheme are brought into charge to tax and the lump sum is provided to the employee, a relative of the employee, the personal representatives of the employee, an ex-spouse of the employee or any other individual designated by the employee, or
  - (b) the scheme was entered into before 1st September 1993 and has not been varied on or after that date with a view to the provision of benefits under the scheme.
- (2) In a case where the employer has not paid any sum or sums with a view to the provision of benefits under the scheme since before 6th April 2006, section 394

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of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to the lump sum.

- (3) In a case where the employer has paid any sum or sums with a view to the provision of benefits under the scheme on or after 6th April 2006—
- (a) section 394 of ITEPA 2003 does not apply in relation to so much of the lump sum as does not exceed the appropriate fraction of the amount of the market value of the assets of the scheme on 5th April 2006 as increased under sub-paragraph (4), and
  - (b) only any sum or sums paid by the employee after that date with a view to the provision of benefits under the scheme is or are to be taken into account under section 395 of ITEPA 2003 (general rules).
- (4) For the purposes of sub-paragraph (3)(a)—
- (a) “the appropriate fraction” of the amount of the market value of the assets of the scheme on 5th April 2006 is the same fraction as the fraction of the assets of the scheme to which the employee would have been entitled had the scheme been wound up on that date, and
  - (b) the amount of the market value of the assets of the scheme on that date is to be increased by the percentage by which the retail prices index for the month in which the lump sum is provided is greater than that for April 2006.
- (5) In this paragraph—
- “ex-spouse”, in relation to an employee, means the other party to a marriage with the employee that has been dissolved or annulled, and
  - “relative”, in relation to an employee, means—
    - (a) the wife or husband of the employee,
    - (b) the widow or widower of the employee,
    - (c) a child of the employee, or
    - (d) a dependant of the employee.

- 55 (1) This paragraph has effect if paragraph 54 does not.
- (2) Section 394 of ITEPA 2003 (charge on benefits from non-approved schemes) does not apply in relation to so much of the lump sum as does not exceed the sum, or the aggregate of the sums, referred to in paragraph 53(1)(b).
- (3) And the reference in section 395 of that Act (general rules) to the amount of the lump sum is to the amount of the remainder of the lump sum.

#### *Inheritance tax*

- 56 (1) This paragraph applies in relation to a fund or scheme—
- (a) which is not a registered pension scheme or a superannuation fund to which section 615(3) of ICTA applies, but
  - (b) to which section 151 of the Inheritance Tax Act 1984 (c. 51) (treatment of pension rights) applied immediately before 6th April 2006.
- (2) If no contributions are made under the fund or scheme on or after that date—
- (a) section 151 of the Inheritance Tax Act 1984 continues to apply to the fund or scheme on and after that date for all purposes of that Act, and

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- (b) property which is part of or held for the purposes of the fund or scheme does not constitute relevant property for the purposes of Chapter 3 of Part 3 of that Act (settlements without interest in possession).
- (3) In any other case, paragraphs 57 and 58 apply to the fund or scheme on and after that date.
- 57 (1) The proportion of the assets of the fund or scheme which at any time is the protected proportion of those assets does not at that time constitute relevant property for the purposes of Chapter 3 of Part 3 of the Inheritance Tax Act 1984 (settlements without interest in possession).

- (2) “The protected proportion” of the assets of the fund or scheme at a time is—

$$\frac{ACV}{V} \times 100$$

where—

V is the market value of the assets of the fund or scheme at that time, and

ACV is the adjusted commencement value, that is an amount equal to the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (3).

- (3) The adjustments are—
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and
  - (b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.
- (4) “Relevant payments” are payments other than—
- (a) payments of costs or expenses, or
  - (b) payments which are (or will be) income of any person for any of the purposes of income tax.
- 58 (1) Section 151 of the Inheritance Tax Act 1984 (treatment of pension rights) continues to apply to so much of the assets of the fund or scheme at any time as does not exceed the amount that is the protected amount at that time.
- (2) But sub-paragraph (1) does not affect the operation of subsection (1)(d) of section 58 of that Act (because paragraph 57 makes provision about the extent to which the assets of the fund or scheme constitute relevant property within the meaning given by that section).
- (3) If inheritance tax has not previously been chargeable (otherwise than only because of this paragraph) by reference to the value of the assets of the fund or scheme on or after 6th April 2006, the protected amount is an amount equal to the amount of the market value of the assets of the fund or scheme on 5th April 2006, but subject to the adjustments provided by sub-paragraph (4).
- (4) The adjustments are—

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- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for April 2006, and
  - (b) a reduction by the amount of any relevant payments made under the fund or scheme on or after 6th April 2006 and before that time.
- (5) If inheritance tax would (apart from this paragraph) have previously been chargeable by reference to the value of the assets of the fund or scheme on one or more occasions on or after 6th April 2006, the protected amount is what it was immediately before the occasion, or (where there has been more than one) the last occasion, on which inheritance tax would have been so chargeable (“the relevant tax occasion”), but—
- (a) reduced by the value of the property on which inheritance tax would have been chargeable on the relevant tax occasion, and
  - (b) subject to the adjustments provided by sub-paragraph (6).
- (6) The adjustments are —
- (a) an increase by the percentage by which the retail prices index for the month of September immediately preceding the time in question is greater than that for the month in which the relevant tax occasion fell, and
  - (b) a reduction by the amount of any payments made under the fund or scheme since the relevant tax occasion.
- (7) “Relevant payments” are payments other than—
- (a) payments of costs or expenses, or
  - (b) payments which are (or will be) income of any person for any of the purposes of income tax.

## SCHEDULE 37

Section 285

### OIL TAXATION: TAX-EXEMPT TARIFFING RECEIPTS AND ASSETS PRODUCING THEM

#### PART 1

##### AMENDMENTS OF THE OIL TAXATION ACT 1983 RELATING TO ALLOWABLE EXPENDITURE AND DISPOSAL RECEIPTS

###### *Introductory*

- 1 The Oil Taxation Act 1983 (c. 56) is amended in accordance with the following provisions of this Part.

###### *Expenditure incurred on long-term assets other than non-dedicated mobile assets*

- 2 (1) Section 3 (expenditure incurred on long-term assets other than non-dedicated mobile assets) is amended as follows.
- (2) In subsection (4) (whole of expenditure to be allowable, except as provided by the provisions there specified) for “section 4” substitute “sections 3A and 4”.

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*Exclusion from s.3(4) of expenditure on assets giving rise to tax-exempt tariffing receipts*

3 After section 3 insert—

**“3A Exclusion from section 3(4) of expenditure on assets giving rise to tax-exempt tariffing receipts**

- (1) This section applies where—
- (a) expenditure incurred on or after 1st January 2004 falls within section 3 (1) above, but
  - (b) some of the use (or expected use) of the asset in relation to which the expenditure was incurred is use in a way that gives rise to tax-exempt tariffing receipts (see section 6A(2) below).
- (2) In any such case, such part of the expenditure as it is just and reasonable to apportion to the use mentioned in subsection (1)(b) above shall be excluded from the expenditure which is allowable as mentioned in section 3(4) above.”.

*Expenditure related to exempt gas: asset use giving rise to tax-exempt tariffing receipts*

4 (1) Section 4 (expenditure related to exempt gas and deballasting) is amended as follows.

(2) After subsection (5) insert—

“(6) But where—

- (a) expenditure would (apart from this subsection) fall within paragraph (a) of subsection (5) above, and
- (b) the asset has, at any time in the period of 6 years ending with the date on which the expenditure was incurred, been used in a way that gives rise to tax-exempt tariffing receipts,

the expenditure shall not be regarded for the purposes of that subsection as expenditure incurred in enhancing the value of the asset with a view to the subsequent disposal of the asset, or of an interest in it, to the extent that the amount of the expenditure falls to be reduced in accordance with subsection (7) below.

- (7) The reduction is to be made by applying section 7A below in relation to the expenditure as it applies in relation to disposal receipts in respect of a disposal, but with the substitution—
- (a) for references to the disponor, of references to the person incurring the expenditure (“the relevant participator”),
  - (b) for references to the amount or value (apart from that section) of any disposal receipts of the disponor in respect of the disposal, of references to the amount which would, apart from subsection (6) above, be the amount of the expenditure incurred by the relevant participator with a view to the subsequent disposal of the asset or of an interest in it,
  - (c) for references to the interest disposed of, of references to the asset or interest whose subsequent disposal gives or is expected to give rise to disposal receipts,
  - (d) for references to the date of the disposal, of references to the date on which the expenditure was incurred,



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and taking the reference in subsection (6)(b) of that section to a reduction made by virtue of that section as a reference to a reduction made by virtue of that section for the purposes of section 7(9) of this Act.”.

*Disposal receipts from assets used in a way that gives rise to tax-exempt tariffing receipts*

- 5 (1) Section 7 (chargeable receipts from disposals) is amended as follows.
- (2) In subsection (4) (no account to be taken of disposal more than 2 years after cessation of use in connection with any oil field whatsoever or ceasing to give rise to tariff receipts)—
- (a) at the end of paragraph (b) insert “or
- (c) ceases to give rise to tax-exempt tariffing receipts of that participator.”; and
- (b) in the closing words, for “later” substitute “ latest ”.
- (3) After subsection (8) insert—
- “(9) In determining the amount or value of the disposal receipts of the participator in question in a case where the qualifying asset has been used in a way that gives rise to tax-exempt tariffing receipts, the amount or value (apart from this subsection) of any disposal receipts of his in respect of the disposal shall be reduced in accordance with section 7A below.”.
- (4) After section 7 insert—

**“7A Reduction of disposal receipts: use giving rise to tax-exempt tariffing receipts**

- (1) Where this section applies, the amount or value (apart from this section) of any disposal receipts of the participator (“the disponor”) in respect of the disposal shall be reduced in accordance with the following provisions of this section.
- (2) The reduction is to be made by multiplying that amount or value by the fraction that is equal to—

$$I - \frac{T}{A}$$

- (3) In that formula—

T is the aggregate of the tax-exempt tariffing use of the asset in the reference period by—

- (a) the disponor, so far as referable to the interest disposed of, and
- (b) each of the previous owners, so far as referable to that previous owner’s represented interest, and

A is the aggregate of all use of the asset in the reference period by—

- (a) the disponor, so far as referable to the interest disposed of, and
- (b) each of the previous owners, so far as referable to that previous owner’s represented interest,

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but only taking into account for this purpose use of the asset by a person at a time when he is or was a participator in a taxable field.

(4) For the purposes of this section—

“the interest disposed of” means the asset, or the interest in an asset, the disposal of which gives rise to the disposal receipts mentioned in subsection (1) above;

“previous owner” means any person from whom the disponent directly or indirectly derives his title to the whole or any part of the interest disposed of;

“the reference period” means the shorter of the following periods ending with the date of the disposal—

- (a) the period of 6 years; or
- (b) the period beginning with the bringing into existence of the asset;

“represented interest”, in the case of a previous owner, means so much of the interest which that previous owner had in the asset as is represented in the interest disposed of;

“tax-exempt tariffing use”, in relation to an asset, means use of the asset in a way that gives rise to tax-exempt tariffing receipts.

(5) Any apportionment that falls to be made for the purpose of determining a previous owner’s represented interest shall be made using a method which is just and reasonable, having regard to—

- (a) the proportion of any person’s interest that was acquired from any particular person, and
- (b) the proportion of any person’s interest that was transferred to any particular person.

(6) Where—

- (a) the disponent or any previous owner acquired the asset or an interest in the asset from another person, and
- (b) on that other person’s corresponding disposal of the asset or interest a reduction was made by virtue of this section,

use of the asset shall not be brought into account in determining T or A in the formula in subsection (2) above to the extent that it was so brought into account in relation to that corresponding disposal.

(7) Where paragraph 9 of Schedule 2 to this Act (reduction of disposal receipts in respect of brought-in assets) applies in relation to an asset, no account shall be taken for the purposes of this section of any use of the asset during the initial period.

In this subsection “the initial period”, in relation to an asset, has the same meaning as it has in relation to that asset in paragraph 7 of Schedule 1 to this Act (restriction on allowable expenditure on brought-in asset).

(8) For the purposes of this section, the amount of use of an asset—

- (a) where the use is in relation to oil, is to be determined by reference to the volume of oil in relation to which the asset is used, and
- (b) where the use is otherwise than in relation to oil, is to be determined on a just and reasonable basis.

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(9) For the purposes of this section, the extent to which use of an asset is referable to—

- (a) the interest disposed of, or
- (b) the represented interest of a previous owner,

shall be determined on a just and reasonable basis, having regard to the size of the interest in question and the size from time to time of the whole interest in the asset of the disponor or, as the case may be, that previous owner.”.

*Assets no longer in use for the principal field*

6 (1) In Schedule 1 (allowable expenditure) in Part 1 (extensions of allowable expenditure for assets generating receipts) paragraph 3 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) But where—

- (a) the expenditure would (apart from this sub-paragraph) be regarded as incurred with a view to the subsequent disposal of the asset or of an interest in it, and
- (b) the asset has, at any time in the period of 6 years ending with the date on which the expenditure was incurred, been used in a way that gives rise to tax-exempt tariffing receipts,

the expenditure shall not be regarded for the purposes of this paragraph as expenditure incurred with a view to the subsequent disposal of the asset or of an interest in it, to the extent that the amount of the expenditure falls to be reduced in accordance with sub-paragraph (2B) below.

(2B) The reduction is to be made by applying section 7A of this Act in relation to the expenditure as it applies in relation to disposal receipts in respect of a disposal, but with the substitution—

- (a) for references to the disponor, of references to the participator incurring the expenditure (“the relevant participator”),
- (b) for references to the amount or value (apart from that section) of any disposal receipts of the disponor in respect of the disposal, of references to the amount which would, apart from sub-paragraph (2A) above, be the amount of the expenditure incurred by the relevant participator with a view to the subsequent disposal of the asset or of an interest in it,
- (c) for references to the interest disposed of, of references to the asset or interest whose subsequent disposal gives or is expected to give rise to disposal receipts,
- (d) for references to the date of the disposal, of references to the date on which the expenditure was incurred,

and taking the reference in subsection (6)(b) of that section to a reduction made by virtue of that section as a reference to a reduction made by virtue of that section for the purposes of section 7(9) of this Act.”.

*Brought-in assets*

7 (1) In Part 2 of Schedule 1, paragraph 7 is amended as follows.

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- (2) In sub-paragraph (1)(c) (use of asset otherwise than in connection with a taxable field between acquisition etc and first use in connection with oil field)—
- (a) after “was used” insert “ (i) ”;
  - (b) after “otherwise than in connection with a taxable field,” insert “ or ”;
  - (c) after the word “or” so inserted, insert the following sub-paragraph—
    - “(ii) in connection with a taxable field in a way that gives rise to tax-exempt tariffing receipts.”.

*Subsequent use of new asset otherwise than in connection with a taxable field*

- 8 (1) In Part 2 of Schedule 1, paragraph 8 is amended as follows.
- (2) In sub-paragraph (3) (asset giving rise to tariff receipts attributable to taxable field treated as used in connection with a taxable field)—
- (a) after “gives rise to” insert “ (a) ”;
  - (b) after “attributable to a taxable field,” insert “ or ”;
  - (c) after the word “or” so inserted, insert the following paragraph—
    - “(b) tax-exempt tariffing receipts which, if they were tariff receipts (and expenditure were or had been allowable accordingly), would be tariff receipts of the purchaser attributable to a taxable field.”.
- (3) In sub-paragraph (5) (chargeable period to be determined in relation to field in respect of which asset last gave rise to tariff receipts of purchaser etc) at the end of paragraph (b) insert “or
- (c) if it is later than paragraph (a) and (where otherwise applicable) paragraph (b) above, in respect of which the asset would have last given rise to tariff receipts of the purchaser had tax-exempt tariffing receipts of the purchaser been tariff receipts of his (and if expenditure were or had been allowable accordingly);”.

## PART 2

### TRANSITIONAL PROVISION

*Expenditure incurred in transitional period: restriction of tax-exempt tariffing receipts*

- 9 (1) In this paragraph—
- “claim period” has the same meaning as in Part 1 of the Oil Taxation Act 1975 (c. 22);
  - “relevant receipts” means each of the following—
    - (a) tax-exempt tariffing receipts;
    - (b) amounts that would be tax-exempt tariffing receipts apart from sub-paragraph (4);
  - “the transitional period” means the period—
    - (a) beginning with 9th April 2003, and
    - (b) ending with 31st December 2003.
- (2) This paragraph applies where—

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- (a) expenditure was incurred in the transitional period by a participator in an oil field in acquiring, bringing into existence or enhancing the value of an asset,
  - (b) the asset is one whose useful life continues, or is expected to continue, after the end of the claim period in which the expenditure was incurred,
  - (c) the expenditure is allowable for a claim period ending after 9th April 2003,
  - (d) at the time the expenditure was incurred, the asset was being, or was expected to be, used to any extent in relation to—
    - (i) an oil field or foreign field (a “user field”), or
    - (ii) oil won from such a field, and
  - (e) that use (or expected use) is use in such a way as, in a chargeable period ending on or after 30th June 2004, gives rise, or would have given rise, to relevant receipts of the participator or, where sub-paragraph (3) applies, of a successor.
- (3) This sub-paragraph applies where—
- (a) after the incurring of the expenditure, there is or has been a transfer of an interest of the participator’s in the asset, and
  - (b) as a result of that transfer (or of any subsequent transfer of the whole or any part of that interest), relevant receipts (“consequential relevant receipts”) arise, or are expected to arise, to a person (a “successor”) who is a participator in an oil field.
- (4) In the case of each user field, the initial portion of the aggregate of the relevant receipts of the participator, and the consequential relevant receipts of each successor, that are referable to—
- (a) use of the asset in relation to that field or oil won from it, or
  - (b) the provision of services or other business facilities of whatever kind in connection with any such use of the asset (otherwise than by the participator or the successor himself),
- shall not be tax-exempt tariffing receipts (and shall accordingly continue to be tariff receipts).
- (5) In this paragraph—
- “the initial portion”, in relation to the aggregate of any relevant receipts, means so much of that aggregate as does not exceed the qualifying threshold for the user field in question; and for this purpose amounts received or receivable at an earlier date are to be attributed to the initial portion before amounts received or receivable at a later date;
- “the qualifying threshold”, in relation to a user field, means an amount equal to such part of the aggregate of the expenditure—
- (a) incurred by the participator in relation to the asset in question, and
  - (b) falling within sub-paragraph (2),
- as it is just and reasonable to apportion to the use (or expected use) of the asset, in relation to that user field or oil won from it, in a way that gives rise to relevant receipts of the participator or consequential relevant receipts of any successor.
- (6) Expressions used in this paragraph and in section 6A of the Oil Taxation Act 1983 (c. 56) have the same meaning in this paragraph as they have in that section.

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### PART 3

#### AMENDMENTS OF THE TAXES ACT 1988

##### *Introductory*

10 The Taxes Act 1988 is amended in accordance with the following provisions of this Part.

##### *Section 496: treatment of tax-exempt tariffing receipts for income and corporation tax*

- 11 (1) Section 496 (tariff receipts) is amended as follows.
- (2) In subsection (1)(a) (tariff receipts to be treated as receipts of the separate trade referred to in section 492(1)) after “tariff receipt” insert “ or tax-exempt tariffing receipt ”.
- (3) In subsection (2) (activities of participator etc giving rise to tariff receipts to be treated as oil extraction activities) after “tariff receipts” insert “ or tax-exempt tariffing receipts ”.
- (4) In subsection (3) (disregard of certain sums in fact received or receivable by person connected with participator)—
- (a) in the opening words, after “tariff receipt” insert “ or tax-exempt tariffing receipt ”;
- (b) in paragraph (b), after “tariff receipt” insert “ or tax-exempt tariffing receipt ”.
- (5) In consequence of the amendments made by this paragraph, the sidenote to the section becomes “ Tariff receipts and tax-exempt tariffing receipts ”.

### PART 4

#### AMENDMENTS OF OTHER ENACTMENTS

##### *FINANCE ACT 1999*

##### *Qualifying assets*

##### *Qualifying assets*

- 12 (1) Section 98 of the Finance Act 1999 (c. 16) is amended as follows.
- (2) After the words “tariff receipts”, in each place where they occur, insert “ , tax-exempt tariffing receipts ”.
- (3) After subsection (6) insert—
- “(6A) In relation to tax-exempt tariffing receipts, any reference in this section—
- (a) to being attributable to a field for a period, or
- (b) to being referable to an asset,
- shall be construed as if tax-exempt tariffing receipts were tariff receipts (and expenditure were or had been allowable accordingly).”.

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## SCHEDULE 38

Section 286

## SCHEDULE TO BE INSERTED AS SCHEDULE 19B TO THE TAXES ACT 1988

The following is the Schedule to be inserted as Schedule 19B to the Taxes Act 1988—

## “SCHEDULE 19B

Section 496A

## PETROLEUM EXTRACTION ACTIVITIES: EXPLORATION EXPENDITURE SUPPLEMENT

**PART 1**

## INTRODUCTORY

**About this Schedule**

- 1 (1) This Schedule entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period ending on or after 1st January 2004, to a supplement (initially of 6%, but variable by Treasury order) in respect of—
  - (a) qualifying capital expenditure incurred before the trade is set up and commenced,
  - (b) losses incurred in the trade, determined by reference to allowances under Part 6 of the Capital Allowances Act (expenditure on research and development) in respect of qualifying capital expenditure, and
  - (c) some or all of the supplement allowed in respect of earlier periods.
- (2) To qualify, the capital expenditure in question must be incurred on or after 1st January 2004 in respect of oil and gas exploration and appraisal (as well as satisfying other conditions).
- (3) Part 2 makes provision about the application and interpretation of this Schedule.
- (4) Part 3 makes provision about supplement in relation to expenditure incurred by the company—
  - (a) with a view to carrying on a ring fence trade, but
  - (b) in an accounting period before the company sets up and commences that trade.
- (5) Part 4 makes provision about supplement in relation to losses incurred in carrying on the ring fence trade.
- (6) There is a limit on the number of accounting periods (6) in respect of which a company may claim supplement.
- (7) In determining the amount of supplement allowable, reductions fall to be made in respect of—
  - (a) disposal receipts by virtue of section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value),
  - (b) ring fence losses that could be set off under section 393A against ring fence profits of earlier periods,
  - (c) ring fence losses incurred in earlier periods that fall to be set off under section 393 against profits of succeeding periods,
  - (d) unrelieved group ring fence profits.

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## PART 2

### APPLICATION AND INTERPRETATION

#### Qualifying companies

- 2 This Schedule applies in relation to any company which—
- (a) carries on a ring fence trade, or
  - (b) is engaged in oil and gas exploration and appraisal (see section 837B) with a view to carrying on a ring fence trade,
- and in this Schedule any such company is referred to as a “qualifying company”.

#### Accounting periods

- 3 (1) In this Schedule, in the case of any qualifying company,—
- “the commencement period” means the accounting period in which the company sets up and commences its ring fence trade;
  - “post-commencement period” means any accounting period ending on or after 1st January 2004—
    - (a) which is the commencement period, or
    - (b) which ends after the commencement period;
  - “pre-commencement period” means any accounting period ending—
    - (a) on or after 1st January 2004, and
    - (b) before the commencement period.
- (2) For the purposes of this Schedule a company not within the charge to corporation tax which incurs qualifying E&A expenditure is to be treated as having such accounting periods as it would have if—
- (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
  - (b) it had started to carry on that trade when it started to carry on the research and development on which the expenditure is incurred.

#### The relevant percentage

- 4 (1) For the purposes of this Schedule, the relevant percentage for any accounting period ending on or after 1st January 2004 is 6%.
- (2) The Treasury may by order vary the percentage for the time being specified in subparagraph (1) for such accounting periods as may be specified in the order.

#### Limit on number of accounting periods for which supplement may be claimed

- 5 (1) A company may claim supplement under this Schedule in respect of no more than 6 accounting periods.
- (2) The accounting periods in respect of which claims are made need not be consecutive.

#### Qualifying E&A expenditure

- 6 (1) For the purposes of this Schedule “qualifying E&A expenditure” is any expenditure as respects which the following conditions are satisfied.



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- (2) Condition 1 is that the expenditure is incurred on or after 1st January 2004.
- (3) Condition 2 is that, for the purposes of Part 6 of the Capital Allowances Act, the expenditure is qualifying expenditure incurred on research and development consisting of oil and gas exploration and appraisal (see section 437(2)(b) of that Act).
- (4) Condition 3 is that an allowance under section 441 of that Act is claimed in respect of the expenditure.
- (5) Condition 4 is that the expenditure is incurred in the course of oil extraction activities.
- (6) Condition 5 is that—
  - (a) those oil extraction activities are comprised in a ring fence trade, or
  - (b) after incurring the expenditure, the person incurring it sets up and commences a ring fence trade connected with the research and development.

### **Unrelieved group ring fence profits for accounting periods**

- 7 (1) There is an amount of unrelieved group ring fence profits for an accounting period of a qualifying company (“company Q”) in any case where—
  - (a) the company and any other company (“company X”) are members of the same group of companies, within the meaning given by section 413(3)(a), and
  - (b) company X has an amount of taxable ring fence profits (see paragraph 8) for a corresponding accounting period.
- (2) An accounting period of company X corresponds to an accounting period of company Q if—
  - (a) it coincides with, or falls wholly within, the accounting period of company Q, or
  - (b) it falls partly within the accounting period of company Q.
- (3) Where an accounting period of company X—
  - (a) coincides with an accounting period of company Q, or
  - (b) falls wholly within an accounting period of company Q,there is, for the accounting period of company Q, an amount of unrelieved group ring fence profits equal to the whole of company X’s taxable ring fence profits for its accounting period.
- (4) Where an accounting period of company X falls partly within an accounting period of company Q—
  - (a) there is an amount of unrelieved group ring fence profits for the accounting period of company Q, and
  - (b) that amount is an amount equal to the part of company X’s taxable ring fence profits for its accounting period that is attributable, on an apportionment in accordance with section 834(4), to the part of that period which falls within the accounting period of company Q.
- (5) This paragraph applies for the purposes of this Schedule.

### **Taxable ring fence profits of an accounting period**

- 8 For the purposes of this Schedule, a company has taxable ring fence profits for an accounting period if it has an amount of ring fence profits which is chargeable to

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corporation tax for that accounting period after any group relief claimed under Chapter 4 of Part 10.

### PART 3

#### PRE-COMMENCEMENT SUPPLEMENT

#### Supplement in respect of a pre-commencement accounting period

- 9 (1) Where—
- (a) a qualifying company claims an allowance under section 441 of the Capital Allowances Act (research and development allowances) for the commencement period, and
  - (b) the claim is for an allowance in respect of qualifying E&A expenditure incurred before that period,
- the company may also claim supplement under this Part of this Schedule (“pre-commencement supplement”) in respect of one or more pre-commencement periods.
- (2) Any pre-commencement supplement allowed on a claim in respect of a pre-commencement period shall be treated as an allowance under Part 6 of the Capital Allowances Act for the commencement period in respect of qualifying E&A expenditure incurred by the company.
  - (3) The amount of the supplement for any pre-commencement period in respect of which a claim under this paragraph is made is the relevant percentage for that period of the reference amount for that period.
  - (4) If the pre-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.
  - (5) Paragraphs 10 to 13 have effect for the purpose of determining the reference amount for a pre-commencement period.

#### The mixed pool of qualifying E&A expenditure and supplement previously allowed

- 10 (1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company shall be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of qualifying E&A expenditure and pre-commencement supplement.
- (2) The pool shall be taken to have consisted of—
    - (a) the company’s qualifying E&A expenditure, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (3), and
    - (b) the company’s pre-commencement supplement, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (4).
  - (3) To allocate qualifying E&A expenditure to the pool for any pre-commencement period, take the following steps—
    - (a) *Step 1:* count as eligible expenditure for that period so much of the qualifying E&A expenditure mentioned in paragraph 9(1)(b) as was incurred in that period,
    - (b) *Step 2:* find the total of all the eligible expenditure for that period (amount E),

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- (c) *Step 3:* if paragraph 11 applies, reduce amount E in accordance with that paragraph,
  - (d) *Step 4:* if paragraph 12 applies, reduce (or, as the case may be, further reduce) amount E in accordance with that paragraph,
- and so much of amount E as remains after making those reductions shall be taken to have been added to the pool in that period.
- (4) If any pre-commencement supplement is allowed on a claim in respect of a pre-commencement period, the amount of that supplement shall be taken to have been added to the pool in that period.

### **Treatment of disposal value on disposal of oil licence with exploitation value**

- 11 (1) This paragraph applies in any case where—
- (a) the qualifying company disposes of an interest in an oil licence in a pre-commencement period,
  - (b) part of the value of the interest (the “deductible amount”) is attributable to qualifying E&A expenditure incurred by the company, and
  - (c) section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value) has effect in relation to the disposal.
- (2) For the purpose of allocating qualifying E&A expenditure to the pool for each pre-commencement period—
- (a) find the total of the deductible amounts in the case of all such disposals made by the company (amount D), and
  - (b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.
- (3) In this paragraph “oil licence” has the same meaning as in section 555 of the Capital Allowances Act (see section 552 (1) of that Act).

### **Reduction in respect of unrelieved group ring fence profits**

- 12 (1) This paragraph applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.
- (2) For the purpose of allocating qualifying E&A expenditure to the pool for that period—
- (a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under paragraph 11, and
  - (b) reduce that amount (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

### **The reference amount for a pre-commencement period**

- 13 For the purposes of this Part of this Schedule, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—
- (a) after the addition to the pool of any qualifying E&A expenditure allocated to the pool for that period in accordance with paragraph 10(3), but
  - (b) before determining, and adding to the pool, the amount of any pre-commencement supplement claimed in respect of the period.

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### Claims for pre-commencement supplement

- 14 (1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made at the same time as, and as if it were part of, the claim under section 441 of the Capital Allowances Act mentioned in paragraph 9(1)(a).
- (2) Subsection (3) of that section (claim for reduced amount) applies in relation to any such claim.

## PART 4

### POST-COMMENCEMENT SUPPLEMENT

#### Supplement in respect of a post-commencement period

- 15 (1) A qualifying company which incurs a qualifying E&A loss (see paragraph 17) in a post-commencement period may claim supplement under this Part of this Schedule (“post-commencement supplement”) in respect of—
- (a) that period, or
  - (b) any subsequent accounting period in which it carries on its ring fence trade.
- (2) Any post-commencement supplement allowed on a claim in respect of a post-commencement period shall be treated for the purposes of the Corporation Tax Acts (other than this Part of this Schedule) as if it were a loss—
- (a) incurred in carrying on the ring fence trade in that period,
  - (b) which falls in whole to be set off under section 393 against trading income from the ring fence trade in succeeding accounting periods.
- (3) Paragraph 74 of Schedule 18 to the Finance Act 1998 (company tax returns etc: time limit for claims for group relief) shall apply in relation to a claim for post-commencement supplement as it applies in relation to a claim for group relief.

#### Amount of post-commencement supplement for a post-commencement period

- 16 (1) The amount of the post-commencement supplement for any post-commencement period in respect of which a claim under paragraph 15 is made is the relevant percentage for that period of the reference amount for that period.
- (2) If the post-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.
- (3) Paragraphs 19 to 24 have effect for the purpose of determining the reference amount for a post-commencement period.

#### Ring fence losses and qualifying E&A losses

- 17 (1) Where—
- (a) in any post-commencement period (“the period of the loss”) a qualifying company carrying on a ring fence trade incurs a loss in the trade, and
  - (b) some or all of the loss falls to be set off under section 393 against trading income from the trade in succeeding accounting periods,
- so much of the loss as falls to be so set off is a “ring fence loss” of the company.

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- (2) In determining for the purposes of this Part of this Schedule how much of a loss incurred in a ring fence trade falls to be set off as mentioned in sub-paragraph (1)(b), it shall be assumed that every claim is made that could be made by the company under section 393A to set losses incurred in the ring fence trade against ring fence profits of earlier post-commencement periods.
- (3) So much of a ring fence loss as is attributable to qualifying E&A allowances for the period of the loss is a “qualifying E&A loss”.
- (4) A ring fence loss is attributable to qualifying E&A allowances to the extent that the amount of the ring fence loss does not exceed the amount of the qualifying E&A allowances for the period of the loss.
- (5) But a claim for post-commencement supplement may include an election for a ring fence loss to be treated—
  - (a) as attributable to qualifying E&A allowances for the period of the loss to such lesser extent as may be specified in the election, or
  - (b) as not attributable to such allowances.
- (6) “Qualifying E&A allowances”, in the case of an accounting period, means allowances for that period under Part 6 of the Capital Allowances Act in respect of qualifying E&A expenditure incurred by the company (including any pre-commencement supplement treated under paragraph 9(2) as such an allowance).
- (7) This paragraph has effect for the purposes of this Part of this Schedule.

### **Ring fence losses and non-qualifying losses**

- 18 (1) So much of a ring fence loss as is not a qualifying E&A loss is a non-qualifying loss.
- (2) Where—
  - (a) a loss was incurred by a qualifying company in its ring fence trade in an accounting period ending on or before 31st December 2003, and
  - (b) some or all of that loss falls to be set off under section 393 against profits of that trade in accounting periods ending on or after that date,
 so much of the loss as falls to be so set off is a ring fence loss and that loss is a non-qualifying loss.
- (3) This paragraph has effect for the purposes of this Part of this Schedule.

### **The pool of qualifying E&A losses and the pool of non-qualifying losses**

- 19 (1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company shall be taken at all times in its post-commencement periods to have—
  - (a) a continuing pool of the company’s non-qualifying losses (the “non-qualifying pool”), and
  - (b) a continuing mixed pool of the company’s qualifying E&A losses and post-commencement supplement (the “qualifying pool”).
- (2) A pool continues even if the amount in it is nil.

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### **The non-qualifying pool**

- 20 (1) The non-qualifying pool consists of the company's non-qualifying losses, allocated to the pool in accordance with sub-paragraph (2).
- (2) A non-qualifying loss is allocated to the pool by adding the amount of the non-qualifying loss to the pool in the period of the loss.
- (3) In the case of a non-qualifying loss incurred in an accounting period ending on or before 31st December 2003, the period of the loss shall be taken for the purposes of sub-paragraph (2) to be the first accounting period of the company that ends on or after 1st January 2004.
- (4) The amount in the non-qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (5) Where a reduction in the amount in the non-qualifying pool falls to be made in any accounting period—
- (a) the reduction is to be made after the addition to the pool of any non-qualifying loss allocated to the pool in that period in accordance with sub-paragraph (2), and
  - (b) references to the amount in the non-qualifying pool shall be construed accordingly.

### **The qualifying pool**

- 21 (1) The qualifying pool consists of—
- (a) the company's qualifying E&A losses, allocated to the pool in accordance with sub-paragraph (2)(a), and
  - (b) the company's post-commencement supplement, allocated to the pool in accordance with sub-paragraph (2)(b).
- (2) The allocation of qualifying E&A losses and post-commencement supplement to the pool is as follows—
- (a) the amount of a qualifying E&A loss is added to the pool in the period of the loss, and
  - (b) if any post-commencement supplement is allowed on a claim in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.
- (3) The amount in the qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (4) Where a reduction in the amount in the qualifying pool falls to be made in any accounting period, the reduction is to be made—
- (a) after the addition to the pool of the amount of any qualifying E&A losses allocated to the pool in that period in accordance with sub-paragraph (2)(a), but
  - (b) before determining, and adding to the pool, the amount of any supplement claimed in respect of the period,
- and references to the amount in the pool shall be construed accordingly.

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### **Reductions in respect of utilised ring fence losses**

- 22 (1) If one or more ring fence losses are set off under section 393 against any profits of a post-commencement period, reductions shall be made in that period in accordance with this paragraph.
- (2) The amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the total amount so set off.
- (3) If any of that sum remains after being so set against the amount in the non-qualifying pool, the amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

### **Reductions in respect of unrelieved group ring fence profits**

- 23 (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions shall be made in that period in accordance with this paragraph.
- (2) In the following provisions of this paragraph, references to the remaining amount in a pool are references to so much (if any) of the amount in the pool as remains after making any reductions that fall to be made in accordance with paragraph 22.
- (3) The remaining amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.
- (4) If any of that sum remains after being so set against the remaining amount in the non-qualifying pool, the remaining amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

### **The reference amount for a post-commencement period**

- 24 For the purposes of this Part of this Schedule the reference amount for a post-commencement period is so much of the amount in the qualifying pool as remains after making any reductions required by paragraph 22 or 23.”.

## SCHEDULE 39

Section 296

### STAMP DUTY LAND TAX AND STAMP DUTY

#### **PART 1**

#### AMENDMENTS TO PART 4 OF THE FINANCE ACT 2003: GENERAL

##### *Introduction*

- 1 Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended in accordance with this Part of this Schedule.

##### *Variation of lease*

- 2 In section 43 (land transactions)—

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- (a) in paragraph (c) of subsection (3) (variation of chargeable interest), after “interest” insert “ (other than a lease) ”;
- (b) after that paragraph insert—
  - “(d) the variation of a lease is an acquisition and disposal of a chargeable interest only where it takes effect, or is treated for the purposes of this Part, as the grant of a new lease.”.

*Agreement for lease*

3 In section 44 (contract and conveyance), after subsection (9) insert—

“(9A) Where—

- (a) paragraph 12A of Schedule 17A applies (agreement for lease), or
- (b) paragraph 19(3) to (6) of Schedule 17A applies (missives of let etc in Scotland),

it applies in place of subsections (4), (8) and (9).”.

*Contract providing for conveyance to third party*

4 (1) After section 44 insert—

**“44A Contract providing for conveyance to third party**

- (1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
  - (a) to a person (C) who is not a party to the contract, or
  - (b) either to such a person or to B.

(2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the contract is substantially performed B is treated for the purposes of this Part as acquiring a chargeable interest, and accordingly as entering into a land transaction.

The effective date of the transaction is when the contract is substantially performed.

(4) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(5) Subject to subsection (6), section 44 (contract and conveyance) does not apply (except so far as it defines “substantial performance”) in relation to the contract.

(6) Where—

- (a) this section applies by virtue of subsection (1)(b), and
- (b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,



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section 44 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a conveyance.

- (7) Section 44 applies in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1) above, that is to be completed by a conveyance.

References to completion in that section, as it so applies, include references to conveyance by A to C of the subject matter of the contract between B and C.

- (8) In this section “contract” includes any agreement and “conveyance” includes any instrument.”.

- (2) In section 48 (chargeable interests), after subsection (6) insert—

“(7) This section has effect subject to subsection (3) of section 44A (contract and conveyance to third party).”.

- (3) In section 77 (notifiable transactions), after subsection (4) insert—

“(5) A land transaction that a person is treated as entering into by virtue of subsection (3) of section 44A (contract and conveyance to third party) is notifiable.”.

*Contract and conveyance: effect of transfer of rights*

- 5 (1) Section 45 (contract and conveyance: effect of transfer of rights) is amended as follows.

- (2) In subsection (1)—

- (a) after paragraph (b) insert “, and  
(c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.”;
- (b) at the end insert “, and references to the transferor and the transferee shall be read accordingly ”.

- (3) For subsection (5) substitute—

“(5) Where a transfer of rights relates to part only of the subject-matter of the original contract (“the relevant part”)—

- (a) subsection (8)(b) of section 44 (restriction of charge to tax on subsequent conveyance) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount, and
- (b) a reference in the second sentence of subsection (3) above to the original contract, or a reference in subsection (4) above to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not relating to the relevant part shall be treated as a separate contract).”.

- (4) After that subsection insert—

“(5A) In relation to a land transaction treated as taking place by virtue of subsection (3)—

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- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to the vendor under the original contract;
- (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either the vendor under the original contract or the transferor.”.

(5) After section 45 insert—

**“45A Contract providing for conveyance to third party: effect of transfer of rights**

- (1) This section applies where—
  - (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
    - (i) to a person (C) who is not a party to the contract, or
    - (ii) either to such a person or to B,
 and
  - (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (D) becomes entitled to exercise any of B’s rights under the original contract in place of B.

References in the following provisions of this section to a transfer of rights are to any such assignment or other transaction.

- (2) D is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44A (contract providing for conveyance to third party) has effect in accordance with the following provisions of this section.
- (3) That section applies as if—
  - (a) D had entered into a contract (a “secondary contract”) in the same terms as the original contract except with D as a party instead of B, and
  - (b) the consideration due from D under the secondary contract were—
    - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by D or a person connected with him, and
    - (ii) the consideration given for the transfer of rights.
- (4) The substantial performance of the original contract shall be disregarded if—
  - (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract, or
  - (b) it occurs after the transfer of rights.
- (5) Where there are successive transfers of rights, subsection (3) has effect in relation to each of them.
- (6) The substantial performance of the secondary contract arising from an earlier transfer of rights shall be disregarded if—

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- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or
  - (b) it occurs after that subsequent transfer.
- (7) Where a transfer of rights relates to only part of the subject matter of the original contract, or to only some of the rights under that contract—
- (a) a reference in subsection (3)(a) or (4) to the original contract, or a reference in subsection (6) to the secondary contract arising from an earlier transfer, is to that contract so far as relating to that part or those rights, and
  - (b) that contract so far as not relating to that part or those rights shall be treated as a separate contract.
- (8) The effective date of a land transaction treated as entered into by virtue of subsection (3) is not earlier than the date of the transfer of rights.
- (9) In relation to a such a transaction—
- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to A;
  - (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either A or B.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b).
- (11) In this section “contract” includes any agreement.”.
- (6) In section 122 (index of defined expressions), in the entry for “vendor” insert at the end “ (see too sections 45(5A) and 45A(9)) ”.

#### *Relief for sale and leaseback arrangements*

<sup>6</sup> [F85(1) Section 57A (sale and leaseback arrangements) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816)) is amended as follows.

- (2) In subsection (3) (the qualifying conditions), for paragraph (b) substitute—
- “(aa) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
  - (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),”.
- (3) After paragraph (c) of that subsection insert—
- “(d) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
  - (e) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.”.

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- (4) Omit subsection (4) (chargeable consideration for sale taken to be not less than market value).]

#### Textual Amendments

**F85** Sch. 39 para. 6 repealed (with effect in accordance with Sch. 39 para. 26 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 4(2)

#### *Registration of land transactions*

- 7 In section 79 (registration of land transactions etc), in subsection (2) (transactions to which section does not apply), for the words from “other than” to the end of paragraph (b) substitute “other than a transaction treated as taking place—
- (a) under subsection (4) of section 44 (contract and conveyance) or under that section as it applies by virtue of section 45 (contract and conveyance: effect of transfer of rights), or
  - (b) under subsection (3) of section 44A (contract providing for conveyance to third party) or under that section as it applies by virtue of section 45A (contract providing for conveyance to third party: effect of transfer of rights).”.

#### *“Effective date” of a transaction*

- 8 In section 119 (meaning of “effective date” of a transaction), in subsection (2) (cases where effective date is not date of completion)—
- (a) after the entry for section 44(4) insert— “ section 44A(3) (contract providing for conveyance to third party), section 45A(8) (contract providing for conveyance to third party: effect of transfer of rights), ”;
  - (b) at the end insert— “ paragraph 12A(2) of Schedule 17A (agreement for lease followed by substantial performance), paragraph 12B(3) of that Schedule (assignment of agreement for lease occurring after agreement substantially performed), and paragraph 19(3) of that Schedule (missives of let etc in Scotland followed by substantial performance). ”.

#### *Chargeable consideration*

- 9 (1) Schedule 4 (chargeable consideration) is amended as follows.
- (2) In paragraph 10 (carrying out of works), after sub-paragraph (2) insert—
- “(2A) Where subsection (8) of section 44 (contract and conveyance) applies, so that there are two notifiable transactions (the first being the contract and the second being the transaction effected on completion), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.”.
- (3) In paragraph 17 (arrangements involving public or educational bodies) (inserted by the Stamp Duty Land Tax (Amendment of Schedule 4 to the Finance Act 2003) Regulations 2003 (S.I. 2003/3293)), after sub-paragraph (4) insert—
- “(4A) Sub-paragraphs (3) and (4) shall be disregarded for the purposes of determining whether the land transaction in question is notifiable.”.

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*Provisions relating to leases*

10 In Schedule 5 (amount of tax chargeable: rent), after paragraph 1 insert—

*“Amounts payable in respect of periods before grant of lease*

1A For the purposes of this Part “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.”

*Provisions relating to leases*

11 [F86(1) Schedule 17A (further provisions relating to leases) (inserted by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816)) is amended as follows.

(2) After paragraph 7 insert—

*“First rent review in final quarter of fifth year*

7A Where—

- (a) a lease contains provision under which the rent may be adjusted,
  - (b) under that provision the first (or only) such adjustment—
    - (i) is to an amount that (before the adjustment) is uncertain, and
    - (ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,
- and
- (c) the specified date falls within the three months before the beginning of the term of the lease,

this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date.

References to the fifth year of the term of the lease shall be read accordingly.”.

(3) In paragraph 9 (rent for overlap period in case of grant of further lease), in subparagraph (1), at the end of paragraph (b) insert

- (c) a person claiming relief against re-entry or forfeiture as under-lessee in relation to the original sub-lease (“the old lease”) is granted a lease (“the new lease”) in pursuance of an order of a court.”.

(4) After paragraph 12 insert—

*“Agreement for lease*

12A(1) This paragraph applies where in England and Wales or Northern Ireland—

- (a) an agreement for a lease is entered into, and
- (b) the agreement is substantially performed without having been completed.

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- (2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is that date.

- (3) Where a lease is subsequently granted in pursuance of the agreement—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (4) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.

- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

#### *Assignment of agreement for lease*

12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.

- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
- (a) the contract were with the assignee and not the assignor, and
  - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.

- (3) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
  - (b) the effective date of that transaction is the date of the assignment.

- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.”.

- (5) In paragraph 16 (surrender of existing lease in return for new lease), at the end insert — “ Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case. ”.

- (6) In paragraph 19 (provisions relating to leases in Scotland), for sub-paragraph (2) substitute—

“(2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”)—

- (a) the first lease is treated as if it were surrendered at that time, and

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- (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—
- (a) there are concluded missives of let that do not constitute a lease, and
- (b) the agreement represented by the missives of let is substantially performed without a lease having been executed,
- the missives of let are treated as if they did constitute a lease (“the notional lease”).
- The effective date of the transaction is when the agreement is substantially performed.
- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
- (a) the notional lease is treated as if it were surrendered at that time, and
- (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either—
- (a) is in conformity with the missives of let, or
- (b) relates to substantially the same property and period as the missives of let.
- (6) Where sub-paragraph (3) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.
- Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.”.]

#### Textual Amendments

**F86** Sch. 39 para. 11 repealed (with effect in accordance with Sch. 39 para. 26 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 4(2)

#### *Transfer of rights after 10th July 2003 relating to earlier contract: applicability of SDLT regime*

- 12 In Schedule 19 (commencement and transitional provisions), in paragraph 3 (contract entered into before first relevant date), for paragraph (c) of sub-paragraph (3) substitute—
- “(c) if on or after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.”.

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### *Commencement*

- 13 (1) Paragraph 4, and paragraphs 7 and 8 so far as relating to the section 44A inserted by that paragraph, apply in relation to any contract entered into after 17th March 2004.
- (2) Paragraph 5, and paragraphs 7 and 8 so far as relating to the section 45A inserted by that paragraph, apply in relation to any transfer of rights occurring after that date.
- (3) Subject to sub-paragraphs (4) and (5), the amendments made by the other provisions of this Part of this Schedule apply in relation to any transaction of which the effective date is after 17th March 2004.
- (4) Paragraph 12 does not apply in relation to a contract that was substantially performed before 17th March 2004.
- (5) Paragraphs 6 and 11 (which contain amendments the effect of which is reproduced in Part 2 of this Schedule) do not apply in relation to any transaction of which the effective date is on or after the day on which this Act is passed.
- (6) In this paragraph—  
     “effective date” and “substantially performed” have the same meaning as in Part 4 of the Finance Act 2003 (as amended by this Part of this Schedule);  
     “transfer of rights” has the same meaning as in section 45 of that Act or, as the case may require, section 45A of that Act (inserted by paragraph 5(5)).

## **PART 2**

### RE-ENACTMENT, WITH CHANGES, OF AMENDMENTS MADE BY SECTION 109 REGULATIONS

#### *Introduction and revocation*

- 14 (1) This Part of this Schedule contains amendments to Parts 4 and 5 of the Finance Act 2003 (c. 14) (stamp duty land tax and stamp duty) corresponding, subject to certain changes, to those made by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816) (made under section 109 of that Act).
- (2) Those regulations are revoked.

#### *Meaning of taking possession*

- 15 (1) Section 44 (contract and conveyance) is amended as follows.
- (2) In subsection (5)(a) (meaning of “substantial performance”: purchaser taking possession), after “the purchaser” insert “, or a person connected with the purchaser,”.
- (3) In subsection (6) (meaning of taking possession)—  
     (a) for paragraph (a) substitute—  
         “(a) possession includes receipt of rents and profits or the right to receive them, and”; and  
     (b) in paragraph (b), for “the purchaser takes possession” substitute “possession is taken”.



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(4) After subsection (10) add—

“(11) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this section.”.

*Relief for sale and leaseback arrangements*

16 After section 57 (disadvantaged areas relief) insert—

**“57A Sale and leaseback arrangements**

(1) The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions specified below are met.

(2) A “sale and leaseback” arrangement means an arrangement under which—

- (a) A transfers or grants to B a major interest in land (the “sale”), and
- (b) out of that interest B grants a lease to A (the “leaseback”).

(3) The qualifying conditions are—

- (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
- (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),
- (c) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
- (d) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.

(4) In this section—

“debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date; and

“money” means money in sterling or another currency.”.

*Relief for certain acquisitions of residential property*

17 (1) For sections 58 and 59 (relief for certain exchanges of residential property and relocation relief) substitute—

**“58A Relief for certain acquisitions of residential property**

Schedule 6A provides for relief in the case of certain acquisitions of residential property.”.

(2) After Schedule 6 insert—

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“SCHEDULE  
6A

Section 58A

RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

**Acquisition by house-building company from individual acquiring new dwelling**

- 1 (1) Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the individual (whether alone or with other individuals) acquires from the house-building company a new dwelling,
  - (b) that the individual—
    - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
    - (ii) intends to occupy the new dwelling as his only or main residence,
  - (c) that each acquisition is entered into in consideration of the other, and
  - (d) that the area of land acquired by the house-building company does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired by the house-building company exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

References in this paragraph to such a company include any company connected with it.

- (5) In this paragraph—
- (a) references to the acquisition of the new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

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### **Acquisition by property trader from individual acquiring new dwelling**

2 (1) Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.

(2) The conditions are—

- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,
- (b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,
- (c) that the individual—
  - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
  - (ii) intends to occupy the new dwelling as his only or main residence,
- (d) that the property trader does not intend—
  - (i) to spend more than the permitted amount on refurbishment of the old dwelling, or
  - (ii) to grant a lease or licence of the old dwelling, or
  - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
- (e) that the area of land acquired by the property trader does not exceed the permitted area.

Paragraph (d)(ii) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

(3) Where the conditions in sub-paragraph (2)(a) to (d) are met, but the area of land acquired by the property trader exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

(4) The provisions of paragraph 1(4) (meaning of “house-building company” etc) also have effect for the purposes of this paragraph.

(5) In this paragraph—

- (a) references to the acquisition of a new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
- (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
- (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

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### **Acquisition by property trader from personal representatives**

- 3 (1) Where a dwelling is acquired by a property trader from the personal representatives of a deceased individual, the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from personal representatives of deceased individuals,
  - (b) that the deceased individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of his death,
  - (c) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the dwelling, or
    - (ii) to grant a lease or licence of the dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and
  - (d) that the area of land acquired does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met, but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

### **Acquisition by property trader from individual where chain of transactions breaks down**

- 4 (1) Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if—
- (a) the individual has made arrangements to sell a dwelling (“the old dwelling”) and acquire another dwelling (“the second dwelling”),
  - (b) the arrangements to sell the old dwelling fail, and
  - (c) the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,
- and the following conditions are met.
- (2) The conditions are—

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- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in those circumstances,
- (b) that the individual—
  - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
  - (ii) intends to occupy the second dwelling as his only or main residence,
- (c) that the property trader does not intend—
  - (i) to spend more than the permitted amount on refurbishment of the old dwelling, or
  - (ii) to grant a lease or licence of the old dwelling, or
  - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
- (d) that the area of land acquired does not exceed the permitted area.

Paragraph (c)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than six months.

- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met, but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) In this paragraph—
  - (a) references to the acquisition of the second dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

### **Acquisition by employer in case of relocation of employment**

- 5 (1) Where a dwelling is acquired from an individual (whether alone or with other individuals) by his employer, the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
  - (a) that the individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of the acquisition,
  - (b) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (c) that the consideration for the acquisition does not exceed the market value of the dwelling, and

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- (d) that the area of land acquired does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph “relocation of employment” means a change of the individual’s place of employment due to—
  - (a) his becoming an employee of the employer,
  - (b) an alteration of the duties of his employment with the employer, or
  - (c) an alteration of the place where he normally performs those duties.
- (5) For the purposes of this paragraph a change of residence is one “resulting from” relocation of employment if—
  - (a) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and
  - (b) his former residence is not within a reasonable daily travelling distance of that place.

The individual’s “new place of employment” means the place where he normally performs, or is normally to perform, the duties of his employment after the relocation.

- (6) In this paragraph—
  - (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling;
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area; and
  - (c) references to an individual’s employer include a prospective employer.

#### **Acquisition by property trader in case of relocation of employment**

- 6 (1) Where a dwelling is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
  - (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in connection with a change of residence resulting from relocation of employment,
  - (b) that the individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of the acquisition,
  - (c) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (d) that the consideration for the acquisition does not exceed the market value of the dwelling,
  - (e) that the property trader does not intend—

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- (i) to spend more than the permitted amount on refurbishment of the dwelling, or
- (ii) to grant a lease or licence of the dwelling, or
- (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and

(f) that the area of land acquired does not exceed the permitted area.

Paragraph (e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than six months.

- (3) Where the conditions in sub-paragraph (2)(a) to (e) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph “relocation of employment” means a change of the individual’s place of employment due to—
- (a) his becoming employed by a new employer,
  - (b) an alteration of the duties of his employment, or
  - (c) an alteration of the place where he normally performs those duties.
- (5) For the purposes of this paragraph a change of residence is one “resulting from” relocation of employment if—
- (a) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and
  - (b) his former residence is not within a reasonable daily travelling distance of that place.

An individual’s “new place of employment” means the place where he normally performs, or is normally to perform, the duties of his employment after the relocation.

- (6) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

### **Meaning of “dwelling”, “new dwelling” and “the permitted area”**

- 7 (1) “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.
- (2) A building or part of a building is a “new dwelling” if—
- (a) it has been constructed for use as a single dwelling and has not previously been occupied, or
  - (b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.

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- (3) “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—
- (a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or
  - (b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.
- (4) Where sub-paragraph (3)(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

### Meaning of “property trader” and “principal”

- 8 (1) A “property trader” means—
- (a) a company,
  - (b) a limited liability partnership, or
  - (c) a partnership whose members are all either companies or limited liability partnerships,
- that carries on the business of buying and selling dwellings.
- (2) In relation to a property trader a “principal” means—
- (a) in the case of a company, a director;
  - (b) in the case of a limited liability partnership, a member;
  - (c) in the case of a partnership whose members are all either companies or limited liability partnerships, a member or a person who is a principal of a member.
- (3) For the purposes of this Schedule—
- (a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
  - (b) references to the principals or employees of a property trader include the principals or employees of any such company.

### Meaning of “refurbishment” and “the permitted amount”

- 9 (1) “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—
- (a) cleaning the dwelling, or
  - (b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.
- (2) The “permitted amount”, in relation to the refurbishment of a dwelling, is—
- (a) 10,000, or
  - (b) 5% of the consideration for the acquisition of the dwelling,
- whichever is the greater, but subject to a maximum of £20,000.

### Connected companies etc

- 10 Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Schedule.



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### Withdrawal of relief under this Schedule

- 11 (1) Relief under this Schedule is withdrawn in the following circumstances.
- (2) Relief under paragraph 2 (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling, or
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (3) Relief under paragraph 3 (acquisition by property trader from personal representatives) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling, or
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.
- (4) Relief under paragraph 4 (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling, or
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (5) Relief under paragraph 6 (acquisition by property trader in case of relocation of employment) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling, or
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (6) Where relief is withdrawn the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.”.

- (3) In section 81 (further return where relief withdrawn)—
- (a) in subsection (1) (obligation to deliver a further return), before paragraph (a) insert—

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- “(za) paragraph 11 of Schedule 6A (relief for certain acquisitions of residential property),”; and
- (b) in subsection (4) (meaning of disqualifying event), before paragraph (a) insert—

“(za) in relation to the withdrawal of relief under Schedule 6A, an event mentioned in paragraph (a), (b) or (c) of paragraph 11(2), (3), (4) or (5) of that Schedule;”.

- (4) In section 87 (interest on unpaid tax)—

- (a) in subsection (3)(a) (relevant date where relief is withdrawn), before subparagraph (i) insert—

“(ia) Schedule 6A (relief for certain acquisitions of residential property),”; and

- (b) in subsection (4) (meaning of disqualifying event), before paragraph (a) insert—

“(za) in relation to the withdrawal of relief under Schedule 6A an event mentioned in paragraph (a), (b) or (c) of paragraph 11(2), (3), (4) or (5) of that Schedule;”.

*Initial transfer of assets to trustees of unit trust scheme*

- 18 After section 64 insert—

**“64A Initial transfer of assets to trustees of unit trust scheme**

- (1) The acquisition of a chargeable interest by trustees of a unit trust scheme is exempt from charge if the following conditions are met.
- (2) The conditions are that—
  - (a) immediately before the acquisition—
    - (i) there were no assets held by the trustees for the purposes of the scheme, and
    - (ii) there were no units of the scheme in issue,
  - (b) the only consideration for the acquisition is the issue of units in the scheme to the vendor, and
  - (c) immediately after the acquisition the vendor is the only unit holder of the scheme.”.

*Return or further return in consequence of later linked transaction*

- 19 (1) After section 81 (further return where relief withdrawn) insert—

**“81A Return or further return in consequence of later linked transaction**

- (1) Where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that the earlier transaction becomes notifiable, or that additional tax is payable in respect of the earlier transaction or that tax is payable in respect of the earlier transaction where none was payable before—

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- (a) the purchaser under the earlier transaction must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the effective date of the later transaction,
  - (b) the return must include a self-assessment of the amount of tax chargeable as a result of the later transaction,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the earlier transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (2) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this section as they apply to a return under section 76 (general requirement to deliver land transaction return), with the following adaptations—
  - (a) in paragraph 5 (formal notice to deliver return), the requirement in sub-paragraph (2)(a) that the notice specify the transaction to which it relates shall be read as requiring both the earlier and later transactions to be specified;
  - (b) references to the effective date of the transaction to which the return relates shall be read as references to the effective date of the later transaction.
- (3) This section does not affect any requirement to make a return under section 76 in respect of the later transaction.”
- (2) In section 81(3) for “land transaction return” substitute “ return under section 76 (general requirement to deliver land transaction return) ”.
- (3) In section 87 (interest on unpaid tax), in subsection (3) (meaning of “the relevant date”), after paragraph (a) insert—
  - “(aa) in the case of an amount payable under section 81A in respect of an earlier transaction because of the effect of a later linked transaction, the effective date of the later transaction;”.

*Declaration by person authorised to act on behalf of purchaser*

20 After section 81A (inserted by paragraph 19 above) insert—

**“81B Declaration by person authorised to act on behalf of individual**

- (1) This section applies to the declaration mentioned in paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is correct and complete).
- (2) The requirement that an individual make such a declaration (alone or jointly with others) is treated as met if a declaration to that effect is made by a person authorised to act on behalf of that individual in relation to the matters to which the return or certificate relates.
- (3) For the purposes of this section a person is not regarded as authorised to act on behalf of an individual unless he is so authorised by a power of attorney in writing, signed by that individual.

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In this subsection as it applies in Scotland “power of attorney” includes factory and commission.

- (4) Nothing in this section affects the making of a declaration in accordance with—
- (a) section 100(2) (persons through whom a company acts), or
  - (b) section 106 (1) or (2) (person authorised to act on behalf of incapacitated person or minor).”.

*Crown application*

- 21 (1) Section 107 (Crown application) is amended as follows.
- (2) For subsection (1) (extent of Crown application) substitute—
- “(1) This Part binds the Crown, subject to the following provisions of this section.”.
- (3) After subsection (3) add—
- “(4) Nothing in this section shall be read as making the Crown liable to prosecution for an offence.”.

*Further provision relating to leases*

- 22 (1) For section 120 (meaning of “lease” and other supplementary provisions) substitute—

**“120 Further provisions relating to leases**

Schedule 17A contains further provisions relating to leases.”.

- (2) After Schedule 17 insert—

“SCHEDULE  
17A

Section 120

FURTHER PROVISIONS RELATING TO LEASES

**Meaning of “lease”**

- 1 In the application of this Part to England and Wales or Northern Ireland “lease” means—
- (a) an interest or right in or over land for a term of years (whether fixed or periodic), or
  - (b) a tenancy at will or other interest or right in or over land terminable by notice at any time.

**Leases for a fixed term**

- 2 In the application of the provisions of this Part to a lease for a fixed term, no account shall be taken of—

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- (a) any contingency as a result of which the lease may determine before the end of the fixed term, or
- (b) any right of either party to determine the lease or renew it.

### **Leases that continue after a fixed term**

- 3 (1) This paragraph applies to—
- (a) a lease for a fixed term and thereafter until determined, or
  - (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Part (except section 77 (notifiable transactions)), a lease to which this paragraph applies is treated—
- (a) in the first instance as if it were a lease for the original fixed term and no longer,
  - (b) if the lease continues after the end of that term, as if it were a lease for a fixed term one year longer than the original fixed term,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term two years longer than the original fixed term,
- and so on.
- (3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease after the end of a fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
  - (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
- (5) For the purposes of section 77 (notifiable transactions) a lease to which this paragraph applies is a lease for whatever is its fixed term.

### **Treatment of leases for indefinite term**

- 4 (1) For the purposes of this Part (except section 77 (notifiable transactions))—
- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of a year,

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- (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of two years,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of three years,
- and so on.
- (2) No account shall be taken for the purposes of this Part of any other statutory provision in England and Wales or Northern Ireland deeming a lease for an indefinite period to be a lease for a different term.
- (3) Where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
  - (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
- (4A) For the purposes of section 77 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than seven years.
- (5) References in this paragraph to a lease for an indefinite period include—
- (a) a periodic tenancy or other interest or right terminable by a period of notice,
  - (b) a tenancy at will in England and Wales or Northern Ireland, or
  - (c) any other interest or right terminable by notice at any time.

#### **Treatment of successive linked leases**

- 5 (1) This paragraph applies where—
- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) those grants are linked transactions.
- (2) This Part applies as if the series of leases were a single lease—
- (a) granted at the time of the grant of the first lease in the series,

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- (b) for a term equal to the aggregate of the terms of all the leases, and
  - (c) in consideration of the rent payable under all of the leases.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).

## Rent

- 6 (1) For the purposes of this Part a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, shall be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of Schedule 4 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

## Variable or uncertain rent

- 7 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
- (a) varies in accordance with provision in the lease, or
  - (b) is contingent, uncertain or unascertained.
- (2) As regards rent payable in respect of any period before the end of the fifth year of the term of the lease—
- (a) the provisions of this Part apply as in relation to other chargeable consideration, and
  - (b) the provisions of section 51 (1) and (2) accordingly apply if the amount is contingent, uncertain or unascertained.
- (3) As regards rent payable in respect of any period after the end of the fifth year of the term of the lease, the annual amount is assumed for the purposes of this Part to be, in every case, equal to the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term.
- In determining that amount take into account (if necessary) any amounts determined as mentioned in sub-paragraph (2)(b), but disregard paragraph 9(2) (deemed reduction of rent for overlap period in case of grant of further lease).
- (4) This paragraph has effect subject to paragraph 8 (adjustment where rent payable ceases to be uncertain).
- (5) No account shall be taken for the purposes of this Part of any provision for rent to be adjusted in line with the retail prices index.

### *First rent review in final quarter of fifth year*

- 7A Where—
- (a) a lease contains provision under which the rent may be adjusted,
  - (b) under that provision the first (or only) such adjustment—

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- (i) is to an amount that (before the adjustment) is uncertain, and
- (ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,

and

- (c) the specified date falls within the three months before the beginning of the term of the lease,

this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date. References to the fifth year of the term of the lease shall be read accordingly.

*Adjustment where rent ceases to be uncertain*

- 8 (1) Where the provisions of section 51 (1) and (2) (contingent, uncertain or unascertained consideration) apply in relation to a transaction by virtue of paragraph 7 (uncertain rent) and—
- (a) the end of the fifth year of the term of the lease is reached, or
  - (b) the amount of rent payable in respect of the first five years of the term of the lease ceases to be uncertain at an earlier date,
- the following provisions have effect to require or permit reconsideration of how this Part applies to the transaction (and to any transaction in relation to which it is a linked transaction).
- (2) For the purposes of this paragraph the amount of rent payable ceases to be uncertain when—
- (a) in the case of contingent rent, the contingency occurs or it becomes clear that it will not occur, and
  - (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.
- (3) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable where none was payable before—
- (a) the purchaser must make a return to the Inland Revenue within 30 days of the date referred to in sub-paragraph (1)(a) or (b),
  - (b) the return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of any tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessment and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date referred to in sub-paragraph (1)(a) or (b).



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- (5) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that less tax is payable in respect of the transaction than has already been paid—
- (a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
  - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid.

*Rent for overlap period in case of grant of further lease*

- 9 (1) This paragraph applies where—
- (a) A surrenders an existing lease to B (“the old lease”) and in consideration of that surrender B grants a lease to A of the same or substantially the same premises (“the new lease”),
  - (b) the tenant under a lease (“the old lease”) of premises to which Part 2 of the Landlord and Tenant Act 1954 or the Business Tenancies (Northern Ireland) Order 1996 applies makes a request for a new tenancy (“the new lease”) which is duly executed,
  - (c) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in his original lease (“the old lease”)—
    - (i) in pursuance of an order of a court on a claim for relief against re-entry or forfeiture, or
    - (ii) in pursuance of a contractual entitlement arising in the event of the head lease being terminated,
- or
- (d) a person who has guaranteed the obligations of a lessee under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Part the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.
- (3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.
- (4) The rent that would have been payable under the old lease shall be taken to be the amount taken into account in determining the stamp duty land tax chargeable in respect of the acquisition of the old lease.
- (5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

*Tenants' obligations etc that do not count as chargeable consideration*

- 10 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—

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- (a) any undertaking by the tenant to repair, maintain or insure the demised premises (in Scotland, the leased premises);
  - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord's costs of management;
  - (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market;
  - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease;
  - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease.
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligation as is mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

*Cases where assignment of lease treated as grant of lease*

- 11 (1) This paragraph applies where—
- (a) the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), or
  - (b) a lease is granted to a person as bare trustee of the grantor, with the result that the lease is treated as vested in the grantor by virtue of paragraph 3 of Schedule 16.
- (2) The first assignment of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Part as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
  - (b) on the same terms as those on which the assignee holds that lease after the assignment.
- (3) The provisions are—
- (a) section 57A (sale and leaseback arrangements);
  - (b) Part 1 or 2 of Schedule 7 (group relief or reconstruction or acquisition relief);
  - (c) section 66 (transfers involving public bodies);
  - (d) Schedule 8 (charities relief);
  - (e) any such regulations as are mentioned in section 123(3) (regulations reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty).
- (4) This paragraph does not apply where the relief in question is group relief, reconstruction or acquisition relief or charities relief and is withdrawn as

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a result of a disqualifying event occurring before the effective date of the assignment.

- (5) For the purposes of sub-paragraph (4) “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Part 1 of Schedule 7);
  - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of that Schedule or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;
  - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 2(3) or 3(2) of Schedule 8.

*Assignment of lease: responsibility of assignee for returns etc*

- 12 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of—
- (a) section 80 (adjustment where contingency ceases or consideration is ascertained),
  - (b) section 81A (return or further return in consequence of later linked transaction),
  - (c) paragraph 3 or 4 of this Schedule (return or further return required where lease for indefinite period continues), or
  - (d) paragraph 8 of this Schedule (adjustment where rent ceases to be uncertain),
- shall, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor shall be treated as if it had been done by or in relation to the assignee.
- (3) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 11).

*Agreement for lease*

- 12A(1) This paragraph applies where in England and Wales or Northern Ireland—
- (a) an agreement for a lease is entered into, and
  - (b) the agreement is substantially performed without having been completed.
- (2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is that date.

- (3) Where a lease is subsequently granted in pursuance of the agreement—
- (a) the notional lease is treated as if it were surrendered at that time, and

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- (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
  - (4) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.
- Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.
- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

*Assignment of agreement for lease*

- 12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.
- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
    - (a) the contract were with the assignee and not the assignor, and
    - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.
  - (3) If the assignment occurs after the agreement has been substantially performed—
    - (a) the assignment is a separate land transaction, and
    - (b) the effective date of that transaction is the date of the assignment.
  - (4) Where there are successive assignments, this paragraph has effect in relation to each of them.

*Increase of rent treated as grant of new lease: variation of lease*

- 13 (1) Where a lease is varied so as to increase the amount of the rent, the variation is treated for the purposes of this Part as if it were the grant of a lease in consideration of the additional rent made payable by it.
- (2) Sub-paragraph (1) does not apply to an increase of rent in pursuance of a provision contained in the lease (but see paragraph 14).

*Increase of rent treated as grant of new lease: abnormal increase after fifth year*

- 14 (1) This paragraph applies if, after the end of the fifth year of the term of a lease—
- (a) the amount of rent payable increases (or is increased) in accordance with the provisions of the lease, and
  - (b) the rent payable as a result (“the new rent”) is such that the increase falls to be regarded as abnormal (see paragraph 15).

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- (2) The increase in rent is treated as if it were the grant of a lease in consideration of the excess rent.
- (3) The excess rent is the difference between the new rent and the rent previously taxed.
- (4) The rent previously taxed is—
  - (a) where the provisions of this paragraph have not previously applied to a rent increase under the lease, the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3));
  - (b) where the provisions of this paragraph have previously so applied, the rent payable as a result of the last increase in relation to which the provisions of this paragraph applied.
- (5) The deemed grant is treated as—
  - (a) made on the date on which the increased rent first became payable, and
  - (b) for a term equal to the unexpired part of the original lease, and as linked with the grant of the original lease (and with any other transaction with which that transaction is linked).
- (6) The assumption in paragraph 7(3) (that the rent does not change after the end of the fifth year of the term of a lease) does not apply for the purposes of this paragraph or paragraph 15 except for the purpose of determining the rent previously taxed.

*Increase of rent after fifth year: whether regarded as abnormal*

- 15 Whether an increase in rent is to be regarded for the purposes of paragraph 14 as abnormal is determined as follows:— *Step One*

Find the start date, which is—

- (a) where the provisions of that paragraph have not previously applied to a rent increase under the lease, the beginning of the period by reference to which the rent assumed to be payable after the fifth year of the term of the lease is determined in accordance with paragraph 7(3);
- (b) where the provisions of that paragraph have previously so applied, the date of the last increase in relation to which the provisions of that paragraph applied.

*Step Two*

Divide the period between the start date and the date on which the new rent first becomes payable (“the reference period”) into—

- (a) successive periods of twelve months running from the start date (if any), and
- (b) any remaining period which does not fall within paragraph (a).

*Step Three*

Find the factor by which the retail prices index has increased over each period identified in step two.

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This is a figure expressed as a decimal and determined by the formula—

If, in relation to any period, RD is equal to or less than RI, the factor by which the retail prices index has increased over the period in question shall be treated as nil.

If, in relation to any period, the figure determined in accordance with the formula would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

#### *Step Four*

Find the relevant factor for each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

where—

m is the number of months in the period in question (treating part of a month as a whole month), and

r is the factor by which the retail prices index has increased over the period in question, determined under step three.

If, in relation to any period, the figure determined in accordance with the formula would have more than 3 decimal places, round it to the nearest third decimal place.

#### *Step Five*

Find the uplift factor for the reference period as follows.

If there is only one period identified in step two, the uplift factor for the reference period is the relevant factor for that period.

If there are only two periods identified in step two, the uplift factor for the reference period is calculated by multiplying the relevant factors for those periods.

If there are more than two periods identified in step two, the uplift factor for the reference period is calculated by—

- (a) multiplying the relevant factors for the first two periods,
- (b) multiplying the result by the relevant factor for the next period,
- (c) if there are further periods, multiplying the result by the relevant factor for the next period,

until all periods have been taken into account.

If the uplift factor for the reference period would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

#### *Step Six*

The rent increase is regarded as abnormal if the new rent is greater than:

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### *Reduction of rent or term*

- 15A(1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessee.
- (2) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessor.

### *Surrender of existing lease in return for new lease*

- 16 Where a lease is granted in consideration of the surrender of an existing lease between the same parties—
- (a) the grant of the new lease does not count as chargeable consideration for the surrender, and
  - (b) the surrender does not count as chargeable consideration for the grant of the new lease.

Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.

### *Assignment of lease: assumption of obligations by assignee*

- 17 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
  - (b) to perform or observe any other undertaking of the tenant under the lease,
- does not count as chargeable consideration for the assignment.

### *Reverse premium*

- 18 (1) In the case of the grant, assignment or surrender of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant;
  - (b) in relation to the assignment of a lease, a premium moving from the assignor to the assignee;
  - (c) in relation to the surrender of a lease, a premium moving from the tenant to the landlord.

### *Provisions relating to leases in Scotland*

- 19 (1) In the application of this Part to Scotland—
- (a) any reference to the term of a lease is to the period of the lease, and
  - (b) any reference to the reversion on a lease is to the interest of the landlord in the property subject to the lease.

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- (2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”)—
- (a) the first lease is treated as if it were surrendered at that time, and
  - (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—
- (a) there is an agreement (including missives of let not constituting a lease) under which a lease is to be executed, and
  - (b) the agreement is substantially performed without a lease having been executed,
- the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.
- The effective date of the transaction is when the agreement is substantially performed.
- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same property and period as, the missives of let or other agreement.
- (6) Where sub-paragraph (3) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.
- Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.”.
- (3) In section 51 (contingent, uncertain or unascertained consideration), after subsection (4) add—
- “(5) This section applies in relation to chargeable consideration consisting of rent only to the extent that it is applied by paragraph 7 of Schedule 17A.”.
- (4) In section 80 (adjustment where contingency ceases or consideration becomes certain)—
- (a) in subsection (3) for “land transaction return” substitute “ return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date of the event as a result of which the return is required ”; and
  - (b) after subsection (4) add—



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“(5) This section does not apply so far as the consideration consists of rent (see paragraph 8 of Schedule 17A).”.

(5) In section 87 (interest on unpaid tax), in subsection (3) (meaning of “the relevant date”), after paragraph (aa) (inserted by paragraph 19(3) above) insert—

“(ab) in the case of an amount payable under paragraph 3(3) or 4(3) of Schedule 17A (leases that continue after a fixed term and treatment of leases for an indefinite term), the day on which the lease becomes treated as being for a longer fixed term;”.

(6) In section 90 (application to defer payment in case of contingent or uncertain consideration), after subsection (6) add—

“(7) This section does not apply so far as the consideration consists of rent.”.

(7) In the table in section 122 (index of defined expressions), in the second column of the entry for “lease and related expressions” for “section 120” substitute “Schedule 17A”.

(8) In paragraph 7 of Schedule 19 (commencement and transitional provisions: earlier related transactions under stamp duty), after sub-paragraph (3) add—

“(4) For the purposes of paragraph 5 of Schedule 17A (treatment of successive linked leases) no account shall be taken of any transaction that is not an SDLT transaction.”.

*Abolition of stamp duty: application to duplicates and counterparts*

23 In section 125(5) (abolition of stamp duty except on instruments relating to stock or marketable securities: instruments to which the section applies)—

- (a) in paragraph (a), after “instrument effecting a land transaction”,
- (b) in paragraph (b), after “instrument effecting a transaction other than a land transaction”, and
- (c) in the second sentence, after “instrument effecting both a land transaction and a transaction other than a land transaction”, insert “ (or any duplicate or counterpart of such an instrument) ”.

*Application of transitional provisions to certain contracts*

24 In Schedule 19 (commencement and transitional provisions), after paragraph 4 (contracts entered into before the implementation date) insert—

*“Contracts substantially performed after implementation date*

4A Where—

- (a) a transaction is effected in pursuance of a contract entered into before the first relevant date,
- (b) the contract is substantially performed, without having been completed, after the implementation date, and
- (c) there is subsequently an event within paragraph 3(3) by virtue of which the transaction is an SDLT transaction,

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the effective date of the transaction shall be taken to be the date of the event referred to in paragraph (c) (and not the date of substantial performance).

*Application of provisions in case of transfer of rights*

- 4B (1) This paragraph applies where section 44 (contract and conveyance) has effect in accordance with section 45 (effect of transfer of rights).
- (2) Any reference in paragraph 3, 4 or 4A to the date when a contract was entered into (or made) shall be read, in relation to a contract deemed to exist by virtue of section 45(3) (deemed secondary contract with transferee), as a reference to the date of the assignment, subsale or other transaction in question.”.

*Stamping of contract or agreement where transaction on completion or grant of lease subject to stamp duty land tax*

- 25 (1) In Schedule 19 (commencement and transitional provisions), after paragraph 7 (earlier related transactions under stamp duty) insert—

*“Stamping of contract where transaction on completion subject to stamp duty land tax*

- 7A (1) This paragraph applies where—
- (a) a contract that apart from paragraph 7 of Schedule 13 to the Finance Act 1999 (contracts chargeable as conveyances on sale) would not be chargeable with stamp duty is entered into before the implementation date,
  - (b) a conveyance made in conformity with the contract is effected on or after the implementation date, and
  - (c) the transaction effected on completion is an SDLT transaction or would be but for an exemption or relief from stamp duty land tax.
- (2) If in those circumstances the contract is presented for stamping together with a Revenue certificate as to compliance with the provisions of this Part of this Act in relation to the transaction effected on completion—
- (a) the payment of stamp duty land tax on that transaction or, as the case may be, the fact that no such tax was payable shall be denoted on the contract by a particular stamp, and
  - (b) the contract shall be deemed thereupon to be duly stamped.
- (3) In this paragraph “conveyance” includes any instrument.”.
- (2) In paragraph 8 of Schedule 19 (time for stamping agreement for lease: lease subject to stamp duty land tax)—
- (a) for the heading substitute “ Stamping of agreement for lease where grant of lease subject to stamp duty land tax ”, and
  - (b) in sub-paragraph (1) for the opening words substitute “ This paragraph applies where— ”.
- (3) For sub-paragraph (2) of that paragraph substitute—



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- (4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

*Duty to keep and preserve records*

- 3 (1) A person who may wish to make a claim must—
- (a) keep such records as may be needed to enable him to make a correct and complete claim, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved until the latest of the following times—
- (a) the end of the period of twelve months beginning with day on which the claim was made;
  - (b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed;
  - (c) where the claim is amended and there is no enquiry into the amendment, the time when the Inland Revenue no longer have power to enquire into the amendment.
- (3) The duty under this paragraph to preserve records may be satisfied by the preservation of the information contained in them.
- (4) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (5) A person who fails to comply with this paragraph in relation to a claim that he makes is liable to a penalty not exceeding £3,000, subject to the following exception.
- (6) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

*Amendment of claim by claimant*

- 4 (1) The claimant may amend his claim by notice to the Inland Revenue.
- (2) No such amendment may be made—
- (a) more than twelve months after the day on which the claim was made, or
  - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
    - (i) beginning with the day on which notice is given, and
    - (ii) ending with the day on which the enquiry under that paragraph is completed.

*Correction of claim by Revenue*

- 5 (1) The Inland Revenue may by notice to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).
- (2) No such correction may be made—
- (a) more than nine months after the day on which the claim was made, or

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- (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
  - (i) beginning with the day on which notice is given, and
  - (ii) ending with the day on which the enquiry under that paragraph is completed.
- (3) A correction under this paragraph is of no effect if, within three months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.
- (4) Notice under sub-paragraph (3) must be given to the officer of the Board by whom the notice of correction was given.

#### *Giving effect to claims and amendments*

- 6 (1) As soon as practicable after a claim is made, or is amended under paragraph 4 or 5, the Inland Revenue shall give effect to the claim or amendment by discharge or repayment of tax.
- (2) Where the Inland Revenue enquire into a claim or amendment—
  - (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 11 (completion of enquiry), and then it applies subject to paragraph 13 (giving effect to amendments under paragraph 11), but
  - (b) the Inland Revenue may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as they think fit.

#### *Notice of enquiry*

- 7 (1) The Inland Revenue may enquire into a person's claim or amendment of a claim if they give him notice of their intention to do so ("notice of enquiry") before the end of the period of nine months after the day on which the claim or amendment was made.
- (2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

#### *Notice to produce documents etc for purposes of enquiry*

- 8 (1) If the Inland Revenue give a person a notice of enquiry, they may by notice in writing require him—
  - (a) to produce to them such documents in his possession or power, and
  - (b) to provide them with such information, in such form,as they may reasonably require for the purposes of the enquiry.
- (2) A notice given to a person under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which he is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
  - (a) the copies must be photographic or other facsimiles, and
  - (b) the Inland Revenue may by notice require the original to be produced for inspection.

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A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the person is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige a person to produce documents or provide information relating to the conduct of any pending appeal by him.

*Appeal against notice to produce documents etc*

- 9 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 8 to produce documents or provide information.
- (2) Notice of appeal must be given—
  - (a) in writing,
  - (b) within 30 days after the issue of the notice appealed against,
  - (c) to the officer of the Board by whom that notice was given.
- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—
  - (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
  - (b) shall confirm the notice so far as it requires the production of documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

*Penalty for failure to produce documents etc*

- 10 (1) A person who fails to comply with a notice under paragraph 8 (notice to produce documents etc for purposes of enquiry) is liable—
  - (a) to a penalty of £50, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £30 for each day on which the failure continues.
- (2) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

*Completion of enquiry*

- 11 (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.

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- (2) A closure notice must either—
- (a) state that in the opinion of the Inland Revenue no amendment of the claim is required, or
  - (b) if in the Inland Revenue’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.
- In the case of an enquiry into an amendment of a claim, paragraph (b) applies only so far as the deficiency or excess is attributable to the amendment.
- (3) A closure notice takes effect when it is issued.

*Direction to complete enquiry*

- 12 (1) The claimant may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

*Giving effect to amendments under paragraph 11*

- 13 (1) Within 30 days after the date of issue of a notice under paragraph 11(2)(b) (closure notice that amends claim), the Inland Revenue shall give effect to the amendment by making such adjustment as may be necessary, whether—
- (a) by way of assessment on the claimant, or
  - (b) by discharge or repayment of tax.
- (2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

*Appeals against amendments under paragraph 11*

- 14 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.
- (2) Notice of the appeal must be given—
- (a) in writing,
  - (b) within 30 days after the date on which the closure notice was issued,
  - (c) to the officer of the Board by whom the closure notice was given.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not deliberate or unreasonable.
- (5) Paragraph 37 of Schedule 10 (settling of appeals by agreement) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under paragraph 35 of that Schedule.

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- (6) On an appeal against an amendment made by a closure notice, the Commissioners may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (7) Where any such amendment is varied, whether by the Commissioners or by the order of a court, paragraph 13 (giving effect to amendments under paragraph 11) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

#### *Jurisdiction of Commissioners*

- 15 (1) An appeal against a conclusion stated or amendment made by a closure notice is to be made to the Special Commissioners if it relates to a claim made to the Board.
- (2) Subject to—
- (a) sub-paragraph (1),
  - (b) paragraph 33(4) of Schedule 10 (appeal against decision on claim for relief in case of double assessment), and
  - (c) any right to elect to bring an appeal before the Special Commissioners conferred by regulations under Schedule 17 (General and Special Commissioners, appeals and other proceedings),
- an appeal under any provision of this Schedule is to be made to the General Commissioners.”

### SCHEDULE 41

Section 304

#### STAMP DUTY LAND TAX: APPLICATION TO CERTAIN PARTNERSHIP TRANSACTIONS

- 1 In Schedule 15 to the Finance Act 2003 (c. 14) (stamp duty land tax: partnerships), for Part 3 (transactions excluded from stamp duty land tax) substitute—

#### **“PART 3**

#### TRANSACTIONS TO WHICH SPECIAL PROVISIONS APPLY

##### **Introduction**

- 9 (1) This Part of this Schedule applies to certain transactions involving—
- (a) the transfer of a chargeable interest to a partnership (paragraph 10),
  - (b) the transfer of an interest in a partnership (paragraphs 14, 17, 31 and 32), or
  - (c) the transfer of a chargeable interest from a partnership (paragraph 18).
- (2) References in this Part of this Schedule to the transfer of a chargeable interest include—
- (a) the grant or creation of a chargeable interest,
  - (b) the variation of a chargeable interest, and



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- (c) the surrender, release or renunciation of a chargeable interest.

### Transfer of chargeable interest to a partnership: general

- 10 (1) This paragraph applies where—
- (a) a partner transfers a chargeable interest to the partnership, or
  - (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
  - (c) a person connected with—
    - (i) a partner, or
    - (ii) a person who becomes a partner as a result of or in connection with the transfer,transfers a chargeable interest to the partnership.

It applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

- (2) The chargeable consideration for the transaction shall (subject to paragraph 13) be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 12 provides for determining the sum of the lower proportions.
- (6) Paragraph 11 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.

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- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to a transaction to which this paragraph applies, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

**Transfer of chargeable interest to a partnership: chargeable consideration including rent**

- 11 (1) This paragraph applies in relation to a transaction to which paragraph 10 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “ the relevant chargeable proportion of the net present value of the rent payable over the term of the lease ”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “ the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases ”.
- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—
- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
  - (b) that chargeable consideration shall be taken to be equal to—

$$RCP \times MV$$

where—

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RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—
- (a) the net present value of the rent payable over the term of a lease, or
  - (b) the market value of the interest transferred,
- is—

$$(100 - \text{SLP})\%$$

where SLP is the sum of the lower proportions.

- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

$$\text{SLP}\%$$

where SLP is the sum of the lower proportions.

- (8) Paragraph 12 provides for determining the sum of the lower proportions.  
(9) This paragraph is subject to paragraph 13.

### **Transfer of chargeable interest to a partnership: sum of the lower proportions**

- 12 (1) The sum of the lower proportions in relation to a transaction to which paragraph 10 applies is determined as follows:—

#### *Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately before the transaction, he was entitled to a proportion of the chargeable interest, and
- (b) immediately after the transaction, he is a partner or connected with a partner.

#### *Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately after the transaction—

- (a) he is a partner, and
- (b) he is the relevant owner or is connected with the relevant owner.

#### *Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction.

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Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partner's partnership share immediately after the transaction.

The proportion of the chargeable interest attributable to the partner is—

- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

*Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

**Transfer of chargeable interest to a partnership consisting wholly of bodies corporate**

- 13 (1) This paragraph applies where—
  - (a) there is a transaction to which paragraph 10 applies;
  - (b) immediately after the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 10 and 11 have effect with these modifications.
- (3) In paragraph 10, for sub-paragraphs (2) to (5) substitute—
 

“(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 10(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.

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- (5) In paragraph 11, omit sub-paragraphs (3) and (6) to (8).
- (6) In paragraph 11, for sub-paragraph (4) substitute—
  - “(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (7) In paragraph 11, for sub-paragraph (5)(b) substitute—
  - “(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (8) Paragraph 12 provides for determining the sum of the lower proportions.

### **Transfer of partnership interest: consideration given and chargeable interest held**

- 14 (1) This paragraph applies where—
  - (a) there is a transfer of an interest in a partnership,
  - (b) consideration is given for the transfer, and
  - (c) the relevant partnership property includes a chargeable interest.
- (2) The transfer—
  - (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The purchaser under the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.
- (4) Consideration is regarded as given for the transfer—
  - (a) in a case within paragraph 36(a), if consideration in money or money’s worth is given by or on behalf of the person acquiring the interest;
  - (b) in a case within paragraph 36(b), if there is a withdrawal of money or money’s worth from the partnership by the person reducing his interest or ceasing to be a partner.
- (5) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
  - (a) any interest that was transferred to the partnership in connection with the transfer;
  - (b) a lease to which paragraph 15 (exclusion of market rent leases) applies.
- (6) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value of the relevant partnership property.
- (7) That proportion is—

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- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
- (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.

#### **Exclusion of market rent leases**

- 15 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 14(5) if the following four conditions are met.
- (2) The first condition is that—
- (a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and
  - (b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.
- (3) The second condition is that the rent payable under the lease as granted was a market rent at the time of the grant.
- (4) The third condition is that—
- (a) the term of the lease is 5 years or less, or
  - (b) if the term of the lease is more than 5 years—
    - (i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and
    - (ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.
- (5) The fourth condition is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less than a market rent.
- (6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.
- (7) A review date is a date from which the rent determined as a result of a rent review is payable.

#### **Partnership interests: application of provisions about exchanges etc.**

- 16 (1) Where paragraph 5 of Schedule 4 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership shall be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.
- (2) In sub-paragraph (1) “relevant partnership property” has the meaning given by paragraph 14(5).
- (3) The provisions of paragraph 6 of Schedule 4 (partition etc: disregard of existing interest) do not apply where this paragraph applies.

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### **Transfer of partnership interest pursuant to earlier arrangements**

- 17 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest to a partnership (“the land transfer”);
  - (b) the land transfer falls within paragraph (a), (b) or (c) of paragraph 10(1);
  - (c) there is subsequently a transfer of an interest in the partnership (“the partnership transfer”);
  - (d) the partnership transfer is made—
    - (i) if the land transfer falls within paragraph 10(1)(a) or (b), by the person who makes the land transfer;
    - (ii) if the land transfer falls within paragraph 10(1)(c), by the partner concerned;
  - (e) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer;
  - (f) the partnership transfer is not (apart from this paragraph) a chargeable transaction.
- (2) The partnership transfer—
- (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The partners shall be taken to be the purchasers under the transaction.
- (4) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.
- (5) That proportion is—
- (a) if the person making the partnership transfer is not a partner immediately after the transfer, his partnership share immediately before the transfer;
  - (b) if he is a partner immediately after the transfer, the difference between his partnership share before and after the transfer.
- (6) The partnership transfer and the land transfer shall be taken to be linked transactions.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

### **Transfer of chargeable interest from a partnership: general**

- 18 (1) This paragraph applies where a chargeable interest is transferred—

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- (a) from a partnership to a person who is or has been one of the partners, or
  - (b) from a partnership to a person connected with a person who is or has been one of the partners.
- (2) The chargeable consideration for the transaction shall (subject to paragraph 24) be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 20 provides for determining the sum of the lower proportions.
- (6) Paragraph 19 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist shall be treated as remaining partnership property until it is distributed.

**Transfer of chargeable interest from a partnership: chargeable consideration including rent**

- 19 (1) This paragraph applies in relation to a transaction to which paragraph 18 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.



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- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “ the relevant chargeable proportion of the net present value of the rent payable over the term of the lease ”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “ the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases ”.
- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—
- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
  - (b) that chargeable consideration shall be taken to be equal to—

$$RCP \times MV$$

where—

RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—
- (a) the net present value of the rent payable over the term of a lease, or
  - (b) the market value of the interest transferred,
- is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

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## SLP %

where SLP is the sum of the lower proportions.

(8) Paragraph 20 provides for determining the sum of the lower proportions.

(9) This paragraph is subject to paragraph 24.

### **Transfer of chargeable interest from a partnership: sum of the lower proportions**

20 (1) The sum of the lower proportions in relation to a transaction to which paragraph 18 applies is determined as follows:—

#### *Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately after the transaction, he is entitled to a proportion of the chargeable interest, and
- (b) immediately before the transaction, he was a partner or connected with a partner.

#### *Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately before the transaction—

- (a) he was a partner, and
- (b) he was the relevant owner or was connected with the relevant owner.

#### *Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he is entitled immediately after the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

#### *Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partnership share attributable to the partner.

The proportion of the chargeable interest attributable to the partner is—

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- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

Paragraph 21 provides for determining the partnership share attributable to the partner.

#### *Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

#### **Transfer of chargeable interest from a partnership: partnership share attributable to partner**

- 21
- (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 20 (1) (see Step Four).
  - (2) Paragraph 22 applies for determining the partnership share attributable to a partner where—
    - (a) the effective date of the transfer of the relevant chargeable interest to the partnership was before 20th October 2003, or
    - (b) the effective date of the transfer of the relevant chargeable interest to the partnership was on or after that date and—
      - (i) the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty, or
      - (ii) any tax payable in respect of the transfer has been duly paid under this Part.
  - (3) Where the effective date of the transfer of the relevant chargeable interest to the partnership was on or after 20th October 2003 but neither of the conditions in sub-paragraphs (i) and (ii) of sub-paragraph (2)(b) is met, the partnership share attributable to the partner is zero.
  - (4) The relevant chargeable interest is—
    - (a) the chargeable interest which ceases to be partnership property as a result of the transaction to which paragraph 18 applies, or
    - (b) where the transaction to which paragraph 18 applies is the grant or creation of a chargeable interest, the chargeable interest out of which that interest is granted or created.

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- 22 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows:—

*Step One*

Find the partner's actual partnership share on the relevant date.

In a case falling within paragraph 21(2)(a), the relevant date—

- (a) if the partner was a partner on 19th October 2003, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

In a case falling within paragraph 21(2)(b), the relevant date—

- (a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

*Step Two*

Add to that partnership share any increases in the partner's partnership share which—

- (a) occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies, and
- (b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if—

- (i) where the transfer which resulted in the increase took place on or before the date on which the Finance Act 2004 was passed, the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty under the enactments relating to stamp duty;
- (ii) where the transfer which resulted in the increase took place after that date, any tax payable in respect of the transfer has been duly paid under this Part.

*Step Three*

Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies.

The result is the partnership share attributable to the partner.

- (2) If the effect of applying Step Three would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.
- (3) In a case falling within paragraph 21(2)(a), if the partner ceased to be a partner before 19th October 2003, the partnership share attributable to the partner is zero.

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- (4) In a case falling within paragraph 21(2)(b), if the partner ceased to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.
- (5) Paragraph 21(4) (relevant chargeable interest) applies for the purposes of this paragraph.

### **Transfer of chargeable interest from a partnership to a partnership**

- 23
- (1) This paragraph applies where—
    - (a) there is a transfer of a chargeable interest from a partnership to a partnership, and
    - (b) the transfer is both—
      - (i) a transaction to which paragraph 10 applies, and
      - (ii) a transaction to which paragraph 18 applies.
  - (2) Where none of the chargeable consideration for the transaction is rent—
    - (a) paragraphs 10(2) to (5) and 18(2) to (5) do not apply;
    - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 10(2) to (5) had applied or, if greater, what it would have been if paragraph 18(2) to (5) had applied.
  - (3) Where the whole or part of the chargeable consideration for the transaction is rent—
    - (a) paragraphs 11 and 19 do not apply;
    - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 11 had applied or, if greater, what it would have been if paragraph 19 had applied.

### **Transfer of chargeable interest from a partnership consisting wholly of bodies corporate**

- 24
- (1) This paragraph applies where—
    - (a) there is a transaction to which paragraph 18 applies;
    - (b) immediately before the transaction all the partners are bodies corporate;
    - (c) the sum of the lower proportions is 75 or more.
  - (2) Paragraphs 18, 19 and 23 have effect with these modifications.
  - (3) In paragraph 18, for sub-paragraphs (2) to (5) substitute—

“(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
  - (4) In paragraph 18(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
  - (5) In paragraph 19, omit sub-paragraphs (3) and (6) to (8).
  - (6) In paragraph 19, for sub-paragraph (4) substitute—

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- “(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”
- (7) In paragraph 19, for sub-paragraph (5)(b) substitute—  
 “(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”
- (8) In paragraph 23(2)—  
 (a) for “paragraphs 10(2) to (5) and 18(2) to (5)” substitute “ paragraphs 10(2) and 18(2) ”;  
 (b) for “paragraph 10(2) to (5)” substitute “ paragraph 10(2) ”;  
 (c) for “paragraph 18(2) to (5)” substitute “ paragraph 18(2) ”.
- (9) Paragraph 20 provides for determining the sum of the lower proportions.

#### **Application of exemptions and reliefs**

- 25 (1) Where paragraph 10, 14, 17 or 18 applies, paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (2) But (subject to paragraphs 26 to 28) this Part of this Schedule has effect subject to any other provision affording exemption or relief from stamp duty land tax.

#### **Application of disadvantaged areas relief**

- 26 (1) Schedule 6 (disadvantaged areas relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) For paragraph 3 substitute—  
 “3 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if every chargeable interest comprising the relevant partnership property is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.
- (2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.”
- (3) In paragraph 5, for sub-paragraphs (2) to (4) substitute—  
 “(2) If the relevant consideration does not exceed £150,000 the transaction is exempt from charge.”
- (4) For paragraph 6 substitute—

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- “6 (1) This paragraph applies where the land is partly non-residential property and partly residential property.
- (2) The non-residential proportion of the chargeable consideration for the transaction does not count as chargeable consideration.
- (3) The non-residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is non-residential property.
- (4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the chargeable consideration counts as chargeable consideration.
- (5) The residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is residential property.”.
- (5) For paragraph 7 substitute—
- “7 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if—
- (a) some (but not all) of the chargeable interests comprising the relevant partnership property are chargeable interests in relation to land that is wholly situated in a disadvantaged area, or
- (b) any chargeable interest comprised in the relevant partnership property is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.
- (2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.
- (3) In this Part—
- (a) references to the disadvantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land situated in a disadvantaged area;
- (b) references to the advantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is situated outside a disadvantaged area.”.
- (6) In paragraph 8, for “consideration attributable to the land situated in the disadvantaged area” substitute “disadvantaged-area proportion of the chargeable consideration”.

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(7) In paragraph 9, for sub-paragraphs (2) to (4) substitute—

“(2) If the relevant consideration does not exceed £150,000 none of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.”.

(8) For paragraph 10 substitute—

“10 (1) This paragraph applies where the land situated in a disadvantaged area is partly non-residential property and partly residential property.

(2) The non-residential proportion of the disadvantaged-area proportion of the chargeable consideration for the transaction does not count as chargeable consideration.

(3) The non-residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is not residential property.

(4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.

(5) The residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is residential property.”.

(9) After paragraph 11 (1) insert—

“(1A) In this Schedule—

“the land transfer” means the transaction that is the land transfer for the purposes of paragraph 17 of Schedule 15;

“the relevant partnership property” has the meaning given by paragraph 14(5) of Schedule 15;

“the relevant property”—

(a) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15, means the relevant partnership property;

(b) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15, means the subject matter of the land transfer.

(1B) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).”.

(10) Omit paragraphs 11(2) and 12.



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### Application of group relief

- 27 (1) Part 1 of Schedule 7 (group relief) applies to—
- (a) a transaction to which paragraph 10 applies, and
  - (b) a transaction that is a chargeable transaction by virtue of paragraph 17,
- with these modifications.
- (2) In paragraph 3(1)(a), for “the purchaser” substitute “ a partner who was a partner at the effective date of the relevant transaction (“the relevant partner”) ”.
- (3) In paragraph 3(1), for paragraph (b) substitute—
- “(b) at the time the relevant partner ceases to be a member of the same group as the vendor (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—
    - (i) was acquired by or on behalf of the partnership under the relevant transaction, or
    - (ii) is derived from a chargeable interest so acquired,and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.
- (4) In paragraph 3(3), for the words from “the transferee company” to the end substitute “ or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership. ”.
- (5) In paragraph 3(4), omit the definition of “relevant associated company”.
- (6) In paragraphs 4 to 6, for “the purchaser” (wherever appearing) substitute “ the relevant partner ”.

### Application of charities relief

- 28 (1) Schedule 8 (charities relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) In paragraph 1(1), for “A land transaction is exempt from charge if the purchaser is a charity” substitute “ A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 of Schedule 15 is exempt from charge if the transferee is a charity ”.
- (3) In paragraph 1(2)—
- (a) for “the purchaser must intend to hold the subject-matter of the transaction” substitute “ every chargeable interest held as partnership property immediately after the transfer must be held ”.

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- (b) in paragraphs (a) and (b) for “the purchaser” substitute “ the transferee ”.
- (4) In paragraph 1(3) for “the purchaser” substitute “ the transferee ”.
- (5) In paragraph 2(1), for paragraph (b) substitute—
  - “(b) at the time of the disqualifying event the partnership property includes a chargeable interest—
    - (i) that was held as partnership property immediately after the relevant transaction, or
    - (ii) that is derived from an interest held as partnership property at that time,”.
- (6) In paragraph 2(3)(a), for “the purchaser” substitute “ the transferee ”.
- (7) In paragraph 2(3), for paragraph (b) substitute—
  - “(b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.
- (8) For paragraph 2(4) substitute—
  - “(4) In sub-paragraphs (1) and (2) an “appropriate proportion” means an appropriate proportion having regard to—
    - (a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and
    - (b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.
- (9) After paragraph 2 insert—

*“Interpretation*

- 3 (1) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).
- (2) Paragraph 34 (1) of Schedule 15 (meaning of references to partnership property) applies for the purposes of this Schedule as it applies for the purposes of Part 3 of that Schedule.”.

**Acquisition of interest in partnership not chargeable except as specially provided**

- 29 Except as provided by—
  - (a) paragraph 10 (transfer of chargeable interest to a partnership), or
  - (b) paragraph 14 (transfer of partnership interest: consideration given and chargeable interest held), or
  - (c) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements),

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the acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land.

#### **Transactions that are not notifiable**

- 30 (1) A transaction which is a chargeable transaction by virtue of paragraph 14 or 17 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the zero rate threshold.
- (2) The consideration for a transaction exceeds the zero rate threshold if either or both of the following conditions are met—
- (a) the relevant consideration for the purposes of section 55 (amount of tax chargeable: general) is such that the rate of tax chargeable under that section is 1% or higher;
  - (b) the relevant rental value for the purposes of Schedule 5 (amount of tax chargeable: rent) is such that the rate of tax chargeable under that Schedule is 1% or higher.

#### **Stamp duty on transfers of partnership interests: continued application**

- 31 (1) Nothing in section 125 (abolition of stamp duty except in relation to stock or marketable securities), or in Part 2 of Schedule 20 (amendments and repeals consequential on that section), affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected.
- (2) In Part 1 of Schedule 20 (provisions supplementing section 125) references to stock or marketable securities shall be read as including any property that is the subject-matter of a transaction by which an interest in a partnership is transferred.
- (3) In their application in relation to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect subject to paragraphs 32 and 33.

#### **Stamp duty on transfers of partnership interests: modification**

- 32 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
  - (b) the relevant partnership property includes a chargeable interest.
- (2) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer.
- (3) The consideration for the transaction shall (subject to sub-paragraph (8)) be taken to be equal to the actual consideration for the transaction less the excluded amount.

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- (4) The excluded amount is a proportion of the net market value of the relevant partnership property immediately after the transfer.
- (5) That proportion is—
  - (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of a chargeable interest at a particular date is—

$$MV - SL$$

where—

MV is the market value of the chargeable interest at that date, and

SL is the amount outstanding at that date on any loan secured solely on the chargeable interest.

- (7) If, in relation to a chargeable interest, SL is greater than MV, the net market value of the chargeable interest shall be taken to be nil.
  - (8) If the excluded amount is greater than the actual consideration for the transaction, the consideration for the transaction shall be taken to be nil.
  - (9) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- 33
- (1) This paragraph applies where—
    - (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
    - (b) the relevant partnership property includes stock or marketable securities.
  - (2) The relevant partnership property, in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer.
  - (3) The stamp duty chargeable on the instrument shall not exceed the stamp duty that would be chargeable if—
    - (a) the instrument were an instrument effecting a transfer of the stock and marketable securities comprised in the relevant partnership property, and
    - (b) the consideration for the transfer were equal to the net market value of that stock and those securities immediately after the transfer, less the excluded amount.
  - (4) The excluded amount is a proportion of the net market value of that stock and those securities immediately after the transfer.

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- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of stock or securities at a particular date is—

$$MV - SL$$

where—

MV is the market value of the stock or securities at that date, and

SL is the amount outstanding at that date on any loan secured solely on the stock or securities.

- (7) If, in relation to any stock or securities, SL is greater than MV, the net market value of the stock or securities shall be taken to be nil.
- (8) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- (9) This paragraph shall be construed as one with the Stamp Act 1891.

#### **Interpretation: partnership property and partnership share**

- 34 (1) Any reference in this Part of this Schedule to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.
- (2) Any reference in this Part of this Schedule to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profits of the partnership.

#### **Interpretation: transfer of chargeable interest to a partnership**

- 35 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

#### **Interpretation: transfer of interest in a partnership**

- 36 For the purposes of this Part of this Schedule, there is a transfer of an interest in a partnership where arrangements are entered into under which—
- (a) a partner transfers the whole or part of his interest as partner to another person (who may be an existing partner), or
  - (b) a person becomes a partner and an existing partner reduces his interest in the partnership or ceases to be a partner.

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### **Interpretation: transfer of chargeable interest from a partnership**

- 37 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest from a partnership in any case where—
- (a) a chargeable interest that was partnership property ceases to be partnership property, or
  - (b) a chargeable interest is granted or created out of partnership property and the interest is not partnership property.

### **Interpretation: market value of leases**

- 38 (1) This paragraph applies in relation to a lease for the purposes of this Part of this Schedule if—
- (a) the grant of the lease is or was a transaction to which paragraph 10 applies or applied (or a transaction to which paragraph 10 would have applied if that paragraph had been in force at the time of the grant), or
  - (b) the grant of the lease is a transaction to which paragraph 18 applies.
- (2) In determining the market value of the lease, an obligation of the tenant under the lease is to be taken into account if (but only if)—
- (a) it is an obligation such as is mentioned in paragraph 10 (1) of Schedule 17A, or
  - (b) it is an obligation to make a payment to a person.

### **Interpretation: connected persons**

- 39 (1) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Part of this Schedule.
- (2) As applied by sub-paragraph (1), that section has effect with the omission of subsection (4) (partners connected with each other).

### **Interpretation: arrangements**

- 40 In this Part of this Schedule “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.
- 2 The following amendments are consequential on the amendment made by paragraph 1—
- (a) in section 104(2) of the Finance Act 2003 (c. 14) (partnerships), for the words following “Part 3” substitute “ makes special provision for certain transactions ”;
  - (b) in section 125(8) of that Act (continued application of stamp duty in relation to certain partnership transactions), for “paragraph 13(2) and (3)” substitute “ paragraph 31 ”;
  - (c) in paragraph 5 of Schedule 15 to that Act (partnerships: introduction to Part 2 of Schedule 15), for the words following “Part 3 of this Schedule” substitute “ (transactions to which special provisions apply) ”.

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- 3 (1) The preceding provisions of this Schedule have effect in relation to any partnership transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is after the day on which this Act is passed.
- (2) “Partnership transaction” means a transaction mentioned in paragraph 9 (1) of Schedule 15 to the Finance Act 2003 (as substituted by paragraph 1 of this Schedule).

## SCHEDULE 42

Section 326

### REPEALS

#### PART 1

##### EXCISE DUTIES

###### (1) HYDROCARBON OIL ETC DUTIES

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Hydrocarbon Oil Duties Act 1979 (c. 5)	In section 6AA(2), the word “or” preceding paragraph (b). In section 20AAB(3), “or (2)”. Schedule 2A.

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1 The repeal in section 6AA(2) of the Hydrocarbon Oil Duties Act 1979 has effect in accordance with section 11(2) of this Act.

2 The other repeals have effect in accordance with section 9(4) of this Act.

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###### (2) GENERAL BETTING DUTY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	In section 7B(2)(b), the words “the bet is made otherwise than by means of a totalisator and”. In section 12(4), the definition of “sponsored pool betting”. In Schedule 1, in paragraph 10(1), the words “, or that facilities for sponsored pool betting on those events are being or are to be provided,”.

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These repeals have effect in accordance with section 15(10) of this Act.

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## PART 2

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

#### (1) TRANSFER PRICING

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 494— (a) in subsection (2), paragraph (d) and the word “and” preceding it, and the third sentence; (b) subsection (2B). In Schedule 24, paragraph 20. In Schedule 28AA— (a) in paragraph 5, in sub-paragraph (1), the words “(but subject to sub-paragraph (2) below)” and sub-paragraphs (2) to (6); (b) in paragraph 11, sub-paragraph (2), in sub-paragraph (3), paragraph (e) and the word “and” preceding it and, in sub-paragraph (4), the words “(2) or”.
Finance Act 1998 (c. 36)	In Schedule 17, paragraph 24.
Finance Act 2002 (c. 23)	In Schedule 29, in paragraph 92(3), paragraph (c) and the word “and” preceding it.
Finance Act 2003 (c. 14)	In Schedule 33, paragraph 13(10).

These repeals have effect in accordance with section 37 of this Act.

#### (2) THIN CAPITALISATION

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 74(1)(n). In section 209— (a) in subsection (2), paragraph (da) and, in paragraph (e), the words “or (da)”; (b) in subsection (3), the words “, (da)”; (c) in subsection (3A)(a), the words “, (da)”; (d) subsections (8A) to (8F). In section 212— (a) in subsection (1)(b), the words “paragraph (da) of section 209(2) or”; (b) in subsection (3), the words “Without prejudice to subsection (4) below,” and the words from “and does not apply” to the end of the subsection; (c) subsection (4).

These repeals have effect in accordance with section 37 of this Act.



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	Section 710(3)(a). In section 730A(5), the words “and (da)”
Finance Act 1995 (c. 4)	Section 87(1), (3), (4) and (5).
Finance Act 1996 (c. 8)	In Schedule 9, in paragraph 11A— (a) sub-paragraphs (2)(a) and (3)(a) ; (b) in sub-paragraph (3)(b), the words “in a case falling within paragraph (b) of that sub-paragraph,”; (c) in sub-paragraph (5)(b), the words “the terms would have been the same, except that”.

These repeals have effect in accordance with section 37 of this Act.

### (3) EXPENSES: COMPANIES WITH INVESTMENT BUSINESS AND INSURANCE COMPANIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 77(1), the words from “and the incidental costs” onwards.
Finance Act 1989 (c. 26)	In section 85(2), the word “or” at the end of paragraph (a) and paragraphs (c) to (d). Section 86(5), (5A) and (7).
Finance Act 1990 (c. 29)	Section 44. In Schedule 7, paragraph 1.
Finance Act 1991 (c. 31)	Section 47. In Schedule 7, paragraph 13(1).
Finance Act 1995 (c. 4)	In Schedule 8, paragraphs 7 and 23(3).
Finance Act 1996 (c. 8)	Section 164(1), (2) and (6). In Schedule 11, in paragraph 4(3), the word “net”. In Schedule 14, paragraph 8. In Schedule 31, paragraph 3 (1) and (2).
Finance Act 1997 (c. 16)	Section 67(4)(a).
Finance (No. 2) Act 1997 (c. 58)	In Schedule 3, paragraph 1. In Schedule 6, paragraph 2.
Finance Act 1998 (c. 36)	In Schedule 3, paragraph 9. In Schedule 7, in paragraph 1 the words “86(2) definition of “deductible”,”.
Finance Act 2000 (c. 17)	In Schedule 27, paragraph 7.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 15 and 70.
Finance Act 2001 (c. 9)	In Schedule 23, paragraph 2.
Finance Act 2003 (c. 14)	In Schedule 33, paragraphs 6(6), 8 (1) and 12(1).

These repeals have effect in accordance with section 42 of this Act.

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#### (4) LOAN RELATIONSHIPS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1996 (c. 8)	In Schedule 9— (a) paragraph 18(3A); (b) in paragraph 20(1), paragraph (c) and the word “and” preceding it; (c) paragraph 20(2).

These repeals have effect in accordance with Schedule 8 to this Act.

#### (5) DERIVATIVE CONTRACTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2002 (c. 23)	In Schedule 26, in paragraph 33(4)(b), the words “issued by the Financial Services Authority”.

This repeal has effect in accordance with Schedule 9 to this Act.

#### (6) AMENDMENT OF ENACTMENTS THAT OPERATE BY REFERENCE TO ACCOUNTING PRACTICE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 730A(6), paragraph (b) (but not the word “and” following it). Section 730BB(12).
Finance Act 1996 (c. 8)	In section 84— (a) in subsection (1) the words “in accordance with an authorised accounting method”; (b) subsections (2) and (4A). Section 84A(4) to (7). Section 88(2)(b) and (3)(b). Section 88A(5). Section 90. Sections 92 to 94 Section 96(3). In section 103(1)— (a) the definition of “authorised accounting method”, “authorised accruals basis of accounting” and

1 These repeals have effect in accordance with section 52(3) of this Act.

2 The repeals of section 92 of the Finance Act 1996, section 65(7) of the Finance Act 1999 and sections 72 and 73 of, and paragraph 5 of Schedule 23 to, the Finance Act 2002 have effect subject to the provisions of paragraph 9(2) and (3) of Schedule 10 to this Act.

3 The repeals of sections 93, 93A and 93B of the Finance Act 1996 and sections 75 to 77 of, and paragraph 18 of Schedule 27 to, the Finance Act 2002 have effect subject to the provisions of paragraph 11(2) and (3) of Schedule 10 to this Act.

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“authorised mark to market basis of accounting”;

(b) the definition of “statutory accounts”.  
Section 103(5).

In Schedule 9—

- (a) paragraph 5 (1) to (2A);
- (b) in paragraph 5A(9), the words “by virtue of paragraph 5(2) above”;
- (c) in paragraph 5A(15), the words “under paragraph 5(1)”;
- (d) in paragraph 6(2), the words “in accordance with that accounting method”;
- (e) in paragraph 6C(2), the words “by virtue of paragraph 5(2) above”;
- (f) in paragraph 9(2), the word “or” at the end of paragraph (b) ;
- (g) paragraph 10A(5);
- (h) in paragraph 12(2A), paragraph (b) and the word “and” preceding it;
- (i) in paragraph 13(1), the words “given by the authorised accounting method used”;
- (j) in paragraph 14(1), the words “given by an authorised accounting method”;
- (k) in paragraph 16(2), the words “, notwithstanding the provisions of any authorised accounting method.”;
- (l) paragraph 19(10).

In Schedule 10, in paragraphs 2A (1) and 2B (1), the words “, notwithstanding section 84(2)(b) of this Act”.

Finance Act 1997 (c. 16)

Section 83 (1) to (5).

Finance Act 1999 (c. 16)

Section 65(7).

Capital Allowances Act 2001 (c. 1)

In Schedule 2, paragraphs 88 and 89.

Finance Act 2002 (c. 23)

Sections 72 to 77.

In section 103(4)—

- (a) in paragraph (b), the words “93(2),”;
- (b) in paragraph (d), the words “sections 84(2)(b) and 85(2)(a),”.

In Schedule 23, paragraphs 4, 5 and 8.

In Schedule 24, paragraphs 1 to 6.

In Schedule 25, paragraphs 4 to 6, 10 and 12.

1 These repeals have effect in accordance with section 52(3) of this Act.

2 The repeals of section 92 of the Finance Act 1996, section 65(7) of the Finance Act 1999 and sections 72 and 73 of, and paragraph 5 of Schedule 23 to, the Finance Act 2002 have effect subject to the provisions of paragraph 9(2) and (3) of Schedule 10 to this Act.

3 The repeals of sections 93, 93A and 93B of the Finance Act 1996 and sections 75 to 77 of, and paragraph 18 of Schedule 27 to, the Finance Act 2002 have effect subject to the provisions of paragraph 11(2) and (3) of Schedule 10 to this Act.

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In Schedule 26—

- (a) in paragraph 15(1), the words “in accordance with an authorised accounting method and”;
- (b) paragraph 15(2), (3) and (6);
- (c) paragraph 16(4) to (7);
- (d) paragraph 22 (1) to (4);
- (e) in paragraph 22(5), paragraph (b) and the word “and” preceding it;
- (f) paragraph 22A(5);
- (g) in paragraph 23(2) and (3), the words “given by the authorised accounting method used”;
- (h) in paragraph 25(1), the words “given by an authorised accounting method”;
- (i) in paragraph 31A(2), the words “, notwithstanding the provisions of any authorised accounting method.”;
- (j) in paragraphs 32 (1) and 33 (1), the words “, notwithstanding paragraph 15”;
- (k) paragraph 52;
- (l) in paragraph 54 (1) the definitions of “authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting” and of “statutory accounts”.

In Schedule 27, paragraph 18.

Finance Act 2003 (c. 14)

In Schedule 27, paragraph 3.

- 1 These repeals have effect in accordance with section 52(3) of this Act.
- 2 The repeals of section 92 of the Finance Act 1996, section 65(7) of the Finance Act 1999 and sections 72 and 73 of, and paragraph 5 of Schedule 23 to, the Finance Act 2002 have effect subject to the provisions of paragraph 9(2) and (3) of Schedule 10 to this Act.
- 3 The repeals of sections 93, 93A and 93B of the Finance Act 1996 and sections 75 to 77 of, and paragraph 18 of Schedule 27 to, the Finance Act 2002 have effect subject to the provisions of paragraph 11(2) and (3) of Schedule 10 to this Act.

(7) CONSTRUCTION INDUSTRY SCHEME

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98, in the Table— <ul style="list-style-type: none"> <li>(a) in the first column, the entry relating to section 561(8) of the Income and Corporation Taxes Act 1988;</li> <li>(b) in the second column, the entry relating to regulations under section 566(1), (2) or (2A) of that Act.</li> </ul>

These repeals have effect in accordance with section 77 of this Act.

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Income and Corporation Taxes Act 1988 (c. 1)	In Part 13, Chapter 4.
Companies Act 1989 (c. 40)	Section 139(5). In Schedule 10, paragraph 38(3).
Finance Act 1994 (c. 9)	In Schedule 17, paragraph 5.
Finance Act 1995 (c. 4)	Section 139. Schedule 27.
Finance Act 1996 (c. 8)	Section 72(3). Section 178.
Finance Act 1997 (c. 16)	Section 54(5).
Finance Act 1998 (c. 36)	Section 55(2). Section 57. Schedule 8.
Government of Wales Act 1998 (c. 38)	In Schedule 16, paragraph 58.
Finance Act 1999 (c. 16)	Section 53.
Finance Act 2002 (c. 23)	In section 40— (a) subsection (1), (b) subsection (3), and (c) in subsection (4), the second sentence.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraphs 58, 59, 60 and 61.
Finance Act 2003 (c. 14)	Section 147(1).

These repeals have effect in accordance with section 77 of this Act.

#### (8) EXEMPTION FOR LOANED COMPUTERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 320(4) and (5).

This repeal has effect in accordance with section 79(4) of this Act.

#### (9) VANS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 114(2), the word “and” following paragraph (b). In section 171, in subsection (2), the words “or van” and, in subsection (3), the words “or a van”. In Part 2 of Schedule 1, in the entry relating to the age of a car or van (in Chapter 6 of

The repeals in section 171 of, and Schedule 1 to, the Income Tax (Earnings and Pensions) Act 2003 have effect for the year 2007-08 and subsequent years of assessment and the other repeals have effect for the year 2005-06 and subsequent years of assessment.

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Part 3) and in the entry relating to the date of first registration (in relation to a car or van) (in Chapter 6 of Part 3), the words “or van”. In Part 3 of Schedule 7, paragraph 24.

The repeals in section 171 of, and Schedule 1 to, the Income Tax (Earnings and Pensions) Act 2003 have effect for the year 2007-08 and subsequent years of assessment and the other repeals have effect for the year 2005-06 and subsequent years of assessment.

#### (10) INCOME TAX RELIEF WHERE NATIONAL INSURANCE CONTRIBUTIONS MET BY EMPLOYEE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 119A(8).
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 480(7). In section 484(7), the definition of “the Contributions and Benefits Act” and the word “and” preceding it.
Finance Act 2003 (c. 14)	In Schedule 23, in paragraphs 21(4) and 22C(4), the words “increased by any amounts deducted under sections 481 and 482 of that Act”.
<p>1 These repeals come into force in accordance with section 85(2) of this Act.</p> <p>2 The repeal of section 119A(8) of the Taxation of Chargeable Gains Act 1992 has effect subject to paragraph 6(4) of Schedule 16 to this Act.</p> <p>3 The repeals in paragraphs 21(4) and 22C(4) of Schedule 23 to the Finance Act 2003 have effect subject to paragraph 5(6) of Schedule 16 to this Act.</p>	

#### (11) EMPLOYMENT-RELATED SECURITIES AND OPTIONS: OTHER PROVISIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 421G. Section 429(5). Section 443(5). Section 446R(5). Section 449(4). In section 519(1), the word “and” at the end of paragraph (a). In section 524(1), the word “and” at the end of paragraph (a). Section 701(2)(c)(ii).
Finance Act 2003 (c. 14)	In Schedule 21, paragraph 18(4).
<p>1 The repeals in sections 429, 443, 446R and 449 of the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 86(8) of this Act.</p> <p>2 The remaining repeals have effect in accordance with section 88(11) of this Act.</p>	

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(12) MINOR AMENDMENTS OF OR CONNECTED WITH  
THE INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2000 (c. 17)	In Schedule 20, paragraph 5(1ZA).
Finance Act 2001 (c. 9)	In Schedule 22, paragraph 5(1A).
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 577(3). In section 677(1), in Part 2 of Table B, the entry relating to compensation payments where child support reduced because of a change in legislation. In Schedule 6— (a) paragraph 166(3); (b) paragraph 245.

1 The repeals of paragraph 5(1ZA) of Schedule 20 to the Finance Act 2000, paragraph 5(1A) of Schedule 22 to the Finance Act 2001 and paragraph 245 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with paragraph 7(3) of Schedule 17 to this Act.

2 The repeal of paragraph 166(3) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 5(2) of Schedule 17 to this Act.

(13) ENTERPRISE INCENTIVES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 289(1)(a), the words “wholly in cash”. In section 289A(8)(b), the words “it is shown that”. In section 293(4A), the words “which is in administration or receivership”. Section 303A(6)(a). In section 308— (a) in subsection (1)(a), the words from “and, except” to “relevant period”, (b) subsection (2)(a) to (c),

1 The repeal in section 303A of the Taxes Act 1988 has effect in accordance with paragraph 8(2) of Schedule 18 to this Act.

2 The repeals in Schedule 28B to the Taxes Act 1988, and in section 73 of the Finance Act 1998, have effect in accordance with paragraph 16 of Schedule 19 to this Act.

3 The repeals of section 151A(3) of, in paragraph 2(4) of Schedule 5B to, and of Schedule 5C to, the Taxation of Chargeable Gains Act 1992, and the repeals in the Finance Act 1995, have effect in accordance with paragraph 7 of Schedule 19 to this Act.

4 The repeal in paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 18(2) of Schedule 18 to this Act.

5 The repeals in the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 96 of this Act.

6 The remaining repeals have effect in relation to shares issued on or after 17th March 2004.

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- (c) in subsection (3)(a), the words “it is shown that”,
  - (d) subsection (3)(b) and the word “and” immediately preceding it,
  - (e) in subsection (4), the words “within the relevant period” and “it is shown that”,
  - (f) subsection (5).
- In Schedule 28B—
- (a) in paragraph 3(3), the words from “and for the purposes” to the end,
  - (b) paragraph 6(5),
  - (c) paragraph 10(3)(a) to (c),
  - (d) in paragraph 10(4), the words “it is shown”, the first “that” in paragraph (a) and the word “that” in paragraph (b),
  - (e) in paragraph 10(5), the words “it is shown that”,
  - (f) paragraph 10(6),
  - (g) in paragraph 11(4), the words “it is shown”, the first “that” in paragraph (a) and the word “that” in paragraph (b).
- Taxation of Chargeable Gains Act 1992 (c. 12)      Section 151A(3).  
In Schedule 5B—
- (a) in paragraph 1(2)(a), the words “wholly in cash”,
  - (b) in paragraph 2(4), the words “or Schedule 5C”,
  - (c) paragraph 14A(6)(a).
- Finance Act 1995 (c. 4)      Section 72(4).  
Schedule 16.
- Finance Act 1998 (c. 36)      In section 73—
- (a) subsection (2),
  - (b) in subsection (3), the words from “and after paragraph (b)” to the end,
  - (c) in subsection (4), the words from “and after” to the end.

- 1 The repeal in section 303A of the Taxes Act 1988 has effect in accordance with paragraph 8(2) of Schedule 18 to this Act.
- 2 The repeals in Schedule 28B to the Taxes Act 1988, and in section 73 of the Finance Act 1998, have effect in accordance with paragraph 16 of Schedule 19 to this Act.
- 3 The repeals of section 151A(3) of, in paragraph 2(4) of Schedule 5B to, and of Schedule 5C to, the Taxation of Chargeable Gains Act 1992, and the repeals in the Finance Act 1995, have effect in accordance with paragraph 7 of Schedule 19 to this Act.
- 4 The repeal in paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 18(2) of Schedule 18 to this Act.
- 5 The repeals in the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 96 of this Act.
- 6 The remaining repeals have effect in relation to shares issued on or after 17th March 2004.



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	In Schedule 13— (a) paragraph 1(1)(a), (b) paragraph 21.
Finance Act 2000 (c. 17)	In Schedule 15— (a) paragraph 21(2)(a) to (c), (b) in paragraph 24(1), the words “which is in administration or receivership”.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 5, paragraph 11(2)(a) to (c) and (3).

- 1 The repeal in section 303A of the Taxes Act 1988 has effect in accordance with paragraph 8(2) of Schedule 18 to this Act.
- 2 The repeals in Schedule 28B to the Taxes Act 1988, and in section 73 of the Finance Act 1998, have effect in accordance with paragraph 16 of Schedule 19 to this Act.
- 3 The repeals of section 151A(3) of, in paragraph 2(4) of Schedule 5B to, and of Schedule 5C to, the Taxation of Chargeable Gains Act 1992, and the repeals in the Finance Act 1995, have effect in accordance with paragraph 7 of Schedule 19 to this Act.
- 4 The repeal in paragraph 14A of Schedule 5B to the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 18(2) of Schedule 18 to this Act.
- 5 The repeals in the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section 96 of this Act.
- 6 The remaining repeals have effect in relation to shares issued on or after 17th March 2004.

#### (14) CHARGEABLE GAINS: GIFTS RELIEF ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 260(6A) and (6B). In section 281(3)(c), the words “nor dealt in on the Unlisted Securities Market”.
Finance Act 1995 (c. 4)	Section 72(6). In Schedule 13, paragraph 4(2).
1	The repeals in section 260 of the Taxation of Chargeable Gains Act 1992 and in the Finance Act 1995 have effect in accordance with paragraph 10(8) of Schedule 21 to this Act.
2	The repeal in section 281 of the Taxation of Chargeable Gains Act 1992 has effect in relation to disposals on or after the passing of this Act.

#### (15) CHARGEABLE GAINS: PRIVATE RESIDENCE RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 223(4)(a), the words “or those provisions as applied by section 225”.
This repeal has effect in accordance with paragraph 7(2) of Schedule 22 to this Act.	

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## (16) MANUFACTURED DIVIDENDS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In Schedule 23A, in paragraph 2A— (a) in sub-paragraph (1A), paragraph (a), paragraph (c) and the word “or” before it and the words following paragraph (c) ; (b) in sub-paragraph (1B), paragraph (c) and the word “or” before it; (c) in sub-paragraph (4), in paragraph (a), the words “or corporation tax” and in paragraph (b), the words “or, as the case may be, total profits”.
Finance Act 2002 (c. 23)	Section 108(2).
<p>1 The repeal of paragraph 2A(1A)(a) of Schedule 23A to the Taxes Act 1988 has effect in accordance with paragraph 2(7) of Schedule 24 to this Act.</p> <p>2 The other repeals in paragraph 2A(1A) of Schedule 23A to the Taxes Act 1988 and the repeals in paragraph 2A(1B) of that Schedule have effect in accordance with paragraph 2(11) of Schedule 24 to this Act.</p> <p>3 The repeal of section 108(2) of the Finance Act 2002 has effect in accordance with paragraph 2(7) and (9) of Schedule 24 to this Act.</p>	

## (17) LIFE POLICIES ETC.: RESTRICTION OF CORRESPONDING DEFICIENCY RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2001 (c. 9)	In Schedule 28, paragraph 13.
This repeal has effect in accordance with section 140(4) to (6) of this Act.	

## (18) OFFSHORE FUNDS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 759 (1) and (1A). In section 760— (a) in subsection (3), paragraphs (b) to (d) and the word “or” preceding paragraph (b) ; (b) subsections (4) to (7). In Schedule 27— (a) paragraph 10; (b) in paragraph 11 (1) and (4), the words “section 760(3) and”; (c) paragraphs 12 and 13;
<p>1 These repeals have effect in accordance with section 145(2) of this Act.</p> <p>2 The repeal of paragraph 3 of Schedule 10 to the Finance Act 1996 has effect subject to paragraph 1(3) and (4) of Schedule 26 to this Act.</p> <p>3 The repeal of paragraph 35 of Schedule 26 to the Finance Act 2002 has effect subject to paragraph 2(3) and (4) of Schedule 26 to this Act.</p>	

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	(d) in paragraph 16(1), the words “by a trustee or officer thereof”.
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule 10, paragraph 14(46).
Finance Act 1995 (c. 4)	Section 134 (1) to (3) and (8).
Finance Act 1996 (c. 8)	In Schedule 10, paragraph 3.
Finance Act 2002 (c. 23)	In Schedule 26, paragraph 35.

- 1 These repeals have effect in accordance with section 145(2) of this Act.
- 2 The repeal of paragraph 3 of Schedule 10 to the Finance Act 1996 has effect subject to paragraph 1(3) and (4) of Schedule 26 to this Act.
- 3 The repeal of paragraph 35 of Schedule 26 to the Finance Act 2002 has effect subject to paragraph 2(3) and (4) of Schedule 26 to this Act.

#### (19) MEANING OF “OFFSHORE INSTALLATION”

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 298(5), the definition of “oil rig”. In paragraph 5 (1) of Schedule 28B, the definition of “oil rig”.
Finance Act 2000 (c. 17)	In paragraph 28(6) of Schedule 15, the definition of “oil rig”. In Schedule 22, paragraph 20(5).
Capital Allowances Act 2001 (c. 2)	Section 94(2)(b) and (3). Section 153(3).
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 305(6), the definition of “offshore installation”. In paragraph 18(8) of Schedule 5, the definition of “oil rig”.

- 1 The repeal in section 298 of the Taxes Act 1988 has effect in accordance with paragraph 4(5) and (6) of Schedule 27 to this Act.
- 2 The repeal in Schedule 28B to the Taxes Act 1988 has effect in accordance with paragraph 5(5) and (6) of Schedule 27 to this Act.
- 3 The repeal in Schedule 15 to the Finance Act 2000 has effect in accordance with paragraph 6(5) and (6) of Schedule 27 to this Act.
- 4 The repeal in Schedule 22 to the Finance Act 2000 has effect in accordance with paragraph 7(2) of Schedule 27 to this Act.
- 5 The repeals in the Capital Allowances Act 2001 have effect in accordance with paragraph 11 (1) of Schedule 27 to this Act.
- 6 The repeal in section 305 of the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 16 of Schedule 27 to this Act.
- 7 The repeal in Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 has effect in accordance with paragraph 17(6) and (7) of Schedule 27 to this Act.

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### PART 3

#### PENSION SCHEMES ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98, in the Table, in the first and second columns, the entries relating to regulations under section 602, 605, 612, 639 and 651A of the Income and Corporation Taxes Act 1988 and the entries relating to section 605 of that Act. In section 100(6)(a), the word “or” in the second place.
Inheritance Tax Act 1984 (c. 51)	Section 12(3) and (4). In section 58(2), the words “part of or” and the words “fund or” (in both places). Section 151 (1) and (1A).
Finance (No.2) Act 1987 (c. 51)	Section 98.
Income and Corporation Taxes Act 1988 (c. 1)	In section 21A(2), the entry relating to section 76 of the Finance Act 1989. In section 336(1A)(b), sub-paragraph (iii) and the word “or” before it. Section 349B(3)(l) and (m). Section 438(8). In section 466(2), the definition of “pension business”. Section 512(2). Sections 590 to 594. Sections 598 to 599A. Sections 601 to 612. In section 613(4), the word “respective” and paragraphs (b) to (d). Sections 618 to 626. Section 628. Sections 630 to 640A. Section 641A. Sections 643 to 646D. Sections 648B to 651A. Sections 653 to 655. Section 658A. In section 659A(1), the words “592(2), 608(2)(a),”, the words “, 620(6) and 643(2)” and the words following paragraph (b). Sections 659B to 659D. In section 659E(2), the entries relating to sections 592(2), 608(2)(a), 620(6) and 643(2) of the Income and Corporation Taxes Act 1988. Schedules 22, 23 and 23ZA.

These repeals have effect on 6th April 2006 (but subject to Schedule 36 to this Act).

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	In Schedule 29, in the Table in paragraph 32, the entries relating to sections 12(2), 151 and 152 of the Inheritance Tax Act 1984.
Finance Act 1988 (c. 39)	Sections 54 to 56. In Schedule 3, paragraph 18. In Schedule 13, paragraph 6.
Finance Act 1989 (c. 26)	Sections 75 to 77. Section 170(4)(a) and (b). Schedule 6. Schedule 7. In Schedule 12, paragraphs 15 and 16.
Finance Act 1991 (c. 31)	Sections 34 to 36.
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 99A(4)(c). In section 271— (a) in subsection (1), paragraphs (d), (g), (h) and (j) and the second sentence, (b) subsection (2), (c) in subsection (7), the words after “chargeable gains;”, and (d) in subsection (10), the words after “options contracts”. In Schedule 1, paragraph 2(8). In Schedule 10, paragraph 14(21).
Finance Act 1993 (c. 34)	Section 106. Section 107(4) to (7). Section 112.
Pension Schemes Act 1993 (c. 48)	In Schedule 8, paragraph 20.
Pension Schemes (Northern Ireland) Act 1993 (c. 49)	In Schedule 7, paragraph 22.
Finance Act 1994 (c. 9)	Sections 103 to 107.
Finance Act 1995 (c. 4)	Sections 58 to 61. In Schedule 8, paragraph 4(3). Schedule 11.
Pensions Act 1995 (c. 26)	In Schedule 5, paragraph 12.
Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))	In Schedule 3, paragraph 8.
Finance Act 1996 (c. 8)	Section 172. In Schedule 21, paragraph 17. In Schedule 39, paragraph 2.
Finance Act 1998 (c. 36)	Section 92. Sections 94 to 97. Section 98(1). Schedule 15.

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Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)	In Schedule 1, paragraphs 3 and 4.
Finance Act 1999 (c. 16)	Section 52. In Schedule 5, paragraphs 4 and 5 and, in paragraph 6(2), the words “and 654”. In Schedule 10, paragraphs 1 to 10 and 12 to 18.
Welfare Reform and Pensions Act 1999 (c. 30)	In Schedule 12, paragraph 13.
Finance Act 2000 (c. 17)	Section 61. In Schedule 8, paragraph 83(2). Schedule 13.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 53 and 54.
Finance Act 2001 (c. 9)	Section 74.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 56(8). Section 224. In section 327(4), the entry relating to section 619 of the Income and Corporation Taxes Act 1988. In Part 6, Chapter 1. Section 407(3). Section 408(2). Section 492(2). In section 566(4), the entry relating to section 623. In Part 9, Chapters 6, 7, 8, 9, 13 and 16. Section 683(4). In Part 2 of Schedule 1, the entries relating to the following expressions: “administrator (in Chapter 2 of Part 6)”, “approved (in Chapter 8 of Part 9)”, “approved (in relation to retirement benefits scheme) (in Chapter 6 of Part 9)”, “approved retirement benefits scheme (in Chapter 6 of Part 9)”, “director (in Chapter 1 of Part 6)”, “employee (in Chapter 1 of Part 6)”, “employee (in Chapter 2 of Part 6)”, “employee (in Chapter 6 of Part 9)”, “employer (in Chapter 1 of Part 6)”, “employment (in Chapter 1 of Part 6)”, “exempt approved scheme (in Chapter 13 of Part 9)”, “ex-spouse (in Chapter 2 of Part 6)”, “ex-spouse (in Chapter 6 of Part 9)”, “former approved superannuation fund (in Chapter 7 of Part 9)”, “income withdrawal (in Chapter 8 of Part 9)”, “non-approved retirement benefits scheme (in Chapter 1 of Part 6)”, “non-approved retirement benefits scheme (in Chapter 2 of Part 6)”, “personal

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	pension arrangements (in chapter 8 of Part 9)”, “personal pension scheme (in Chapter 8 of Part 9)”, “provision of benefits in respect of an employee (in Chapter 1 of Part 6)”, “provision of relevant benefits (in Chapter 2 of Part 6)”, “relative (in Chapter 2 of Part 6)”, “relevant benefits (in Chapter 1 of Part 6)”, “relevant benefits (in Chapter 2 of Part 6)”, “relevant statutory scheme (in Chapter 13 of Part 9)”, “retirement annuity contract (in Chapter 9 of Part 9)”, and “retirement benefits scheme (in Chapter 6 of Part 9)”. In Schedule 6, paragraphs 72, 73, 79, 80 (1) to (5), 82, 89, 90, 92 to 95, 97, 98, 99, 125(3) and 161. In Schedule 7, paragraph 41.
Finance Act 2003 (c. 14)	In section 153(2)(a), the words “606(13),”. Section 174. In Schedule 24, in paragraph 2(1), the word “or” at the end of paragraph (a). In Schedule 27, paragraph 1(2).
Finance Act 2004 (c. 12)	In Schedule 17, paragraphs 2 and 10(4).

These repeals have effect on 6th April 2006 (but subject to Schedule 36 to this Act).

## PART 4

### OTHER TAXES

#### (1) INHERITANCE TAX

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Supreme Court Act 1981 (c. 54)	Section 109(3).
Inheritance Tax Act 1984 (c. 51)	Section 256(1)(c) and (2).
1	The repeal in section 109 of the Supreme Court Act 1981 has effect in accordance with section 294 (4) of this Act.
2	The repeals in section 256 of the Inheritance Tax Act 1984 come into force with the passing of this Act.

#### (2) STAMP DUTY LAND TAX

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2003 (c. 14)	In section 43(3), the word “and” preceding paragraph (c).
1	The repeals in Schedule 10 to the Finance Act 2003 come into force with the passing of this Act.
2	The repeals in sections 43, 45 and 119 of that Act have effect in accordance with paragraph 13 of Schedule 39 to this Act.
3	The other repeals have effect in accordance with paragraph 26 of that Schedule.

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	In section 45(1), the word “and” preceding paragraph (b).
	In section 47(3), the words from “and section 58” to the end.
	In section 77(2)(a) and (b), the word “contractual”.
	In section 80(2), the words “or chargeable”.
	In section 119(2), the word “and” at the end of the entry for section 44(4).
	In Schedule 4—
	(a) in paragraph 5(6), the words from “and section 58” to the end;
	(b) paragraphs 13 to 15.
	In Schedule 5—
	(a) in paragraph 3, the words “(see paragraphs 4 and 5)” and “(see paragraphs 6 and 7)”;
	(b) paragraphs 4 to 7, 10 and 11.
	In Schedule 10—
	(a) paragraph 33(2) and (3);
	(b) in paragraph 34(2), the words “by notice in writing given to the Inland Revenue”;
	(c) paragraph 34(3).
	In Schedule 19, paragraph 6(1).
Finance Act 2004 (c. 12)	In Schedule 39, paragraphs 6 and 11.
1	The repeals in Schedule 10 to the Finance Act 2003 come into force with the passing of this Act.
2	The repeals in sections 43, 45 and 119 of that Act have effect in accordance with paragraph 13 of Schedule 39 to this Act.
3	The other repeals have effect in accordance with paragraph 26 of that Schedule.

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## PART 5

### MISCELLANEOUS MATTERS

#### ENDING OF SHIPBUILDERS RELIEF

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1966 (c. 18)	Section 2.

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This repeal has effect in accordance with section 323 of this Act.

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