



# Finance Act 2004

## 2004 CHAPTER 12

### PART 3

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

### 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.

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(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—

**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.”.

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- (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, ”.
- (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

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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.
- (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.

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- (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—
  - (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

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- (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—
  - “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—

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- (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 sub-paragraphs (4) and (5) below); and
  - (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.”

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(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

(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



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- (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.”.

*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

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- (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.

### *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),

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- (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;
  - (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

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- (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
- (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);

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- (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”.

### **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

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(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.

(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—

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- (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.
- (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

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- (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.
- (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;”.



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### **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,
  - (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,

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- (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);

“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—

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- (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.
- (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

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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 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

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- (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 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;”.

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- (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.
- (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,

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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
  - (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.

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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.

- (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



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(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);

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)—

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- (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*

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—

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- (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.

*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—

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- (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—

- (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).

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#### **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
  - (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

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- (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.

#### **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,

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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).
- (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;

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“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”),
- (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.



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- (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.
- (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.”.

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- (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).
- (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.

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### *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”—
  - (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)—

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- (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;”;

““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.
- (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—

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- (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.

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## **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),
  - 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—

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- (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.

#### 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—
    - (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—

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- (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—
  - (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.

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- (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.



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