



# Finance Act 2005

## 2005 CHAPTER 7

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [7th April 2005]

Most Gracious Sovereign

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

### PART 1

#### EXCISE DUTIES

##### *Tobacco products duty*

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

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

##### “TABLE

1.Cigarettes	An amount equal to 22 per cent of the retail price plus £102.39 per thousand cigarettes.
2.Cigars	£149.12 per kilogram.

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3.Hand-rolling tobacco	£107.18 per kilogram.
4.Other smoking tobacco and chewing tobacco	£65.56 per kilogram.”

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- (2) This section shall be deemed to have come into force at 6 o'clock in the evening of 16th March 2005.

### *Alcoholic liquor duties*

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

- (1) In section 36(1AA)(a) of ALDA 1979 (rate of duty on beer) for “£12.59” substitute “ £12.92 ”.

- (2) This section shall be deemed to have come into force at midnight on 20th March 2005.

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

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

### **“PART 1**

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

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<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	£
Wine or made-wine of a strength not exceeding 4 per cent	51.69
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	71.07
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not sparkling	167.72
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	166.70
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	220.54
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	223.62”

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- (2) This section shall be deemed to have come into force at midnight on 20th March 2005.

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### *Hydrocarbon oil etc duties*

#### **4 Consolidation of current rates of hydrocarbon oil duties etc.**

- (1) HODA 1979 is amended as follows.
- (2) In subsection (1A) of section 6 (hydrocarbon oil: rates of duty)—
  - (a) in paragraph (a) (ultra low sulphur petrol), for “£0.4902” substitute “ £0.4710 ”,
  - (b) in paragraph (aa) (sulphur-free petrol), for “£0.4852” substitute “ £0.4710 ”,
  - (c) in paragraph (b) (light oil other than ultra low sulphur petrol and sulphur-free petrol), for “£0.5790” substitute “ £0.5620 ”,
  - (d) in paragraph (c) (ultra low sulphur diesel), for “£0.4902” substitute “ £0.4710 ”,
  - (e) in paragraph (ca) (sulphur-free diesel), for “£0.4852” substitute “ £0.4710 ”, and
  - (f) in paragraph (d) (heavy oil other than ultra low sulphur diesel and sulphur-free diesel), for “£0.5487” substitute “ £0.5327 ”.
- (3) In subsection (3) of that section (aviation gasoline), for “(1A) above in relation to light oil” substitute “ (1A)(b) above ”.
- (4) In section 6AA(3) (biodiesel), for “£0.2852” substitute “ £0.2710 ”.
- (5) In section 6AD(3) (bioethanol), for “£0.2852” substitute “ £0.2710 ”.
- (6) In section 8(3) (road fuel gas)—
  - (a) in paragraph (a) (natural road fuel gas), for “£0.1110” substitute “ £0.0900 ”, and
  - (b) in paragraph (b) (other road fuel gas), for “£0.1303” substitute “ £0.0900 ”.
- (7) In section 11(1) (rebate on heavy oil)—
  - (a) in paragraph (a) (fuel oil), for “£0.0624” substitute “ £0.0482 ”,
  - (b) in paragraph (b) (gas oil which is not ultra low sulphur diesel), for “£0.0664” substitute “ £0.0522 ”, and
  - (c) in paragraph (ba) (ultra low sulphur diesel), for “£0.0664” substitute “ £0.0522 ”.
- (8) In section 13AA(1) (restrictions on use of rebated kerosene), for “for rebated gas oil which is then in force, instead of at the rate then in force under section 11(1)(c) above” substitute “ then in force under paragraph (b) of subsection (1) of section 11, instead of at the rate then in force under paragraph (c) of that subsection ”.
- (9) In section 13A(1) (rebate on unleaded petrol), for “£0.0620” substitute “ £0.0601 ”.
- (10) In section 14(1) (rebate on light oil for use as furnace oil), for “£0.0624” substitute “ £0.0482 ”.
- (11) In consequence of the preceding provisions the following instruments are revoked—
  - (a) the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2004 (S.I. 2004/2063),
  - (b) the Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2004 (S.I. 2004/2069),

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- (c) the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) (Amendment) Order 2004 (S.I. 2004/3160), and
- (d) the Excise Duties (Surcharges or Rebates) (Bioethanol) Order 2004 (S.I. 2004/3162).

(12) This section comes into force on the day on which this Act is passed.

## **5 Rates of hydrocarbon oil duties etc. from 1st September 2005**

- (1) HODA 1979 is amended as follows.
- (2) In subsection (1A) of section 6 (hydrocarbon oil: rates of duty)—
  - (a) in paragraph (a) (ultra low sulphur petrol), for “£0.4710” substitute “ £0.4832 ”,
  - (b) in paragraph (aa) (sulphur-free petrol), for “£0.4710” substitute “ £0.4832 ”,
  - (c) in paragraph (b) (light oil other than ultra low sulphur petrol and sulphur-free petrol), for “£0.5620” substitute “ £0.5766 ”,
  - (d) in paragraph (c) (ultra low sulphur diesel), for “£0.4710” substitute “ £0.4832 ”,
  - (e) in paragraph (ca) (sulphur-free diesel), for “£0.4710” substitute “ £0.4832 ”, and
  - (f) in paragraph (d) (heavy oil other than ultra low sulphur diesel and sulphur-free diesel), for “£0.5327” substitute “ £0.5465 ”.
- (3) In section 6AA(3) (biodiesel), for “£0.2710” substitute “ £0.2832 ”.
- (4) In section 6AD(3) (bioethanol), for “£0.2710” substitute “ £0.2832 ”.
- (5) In section 8(3) (road fuel gas)—
  - (a) in paragraph (a) (natural road fuel gas), for “£0.0900” substitute “ £0.1080 ”, and
  - (b) in paragraph (b) (other road fuel gas), for “£0.0900” substitute “ £0.1270 ”.
- (6) In section 11(1) (rebate on heavy oil)—
  - (a) in paragraph (a) (fuel oil), for “£0.0482” substitute “ £0.0604 ”,
  - (b) in paragraph (b) (gas oil which is not ultra low sulphur diesel), for “£0.0522” substitute “ £0.0644 ”, and
  - (c) in paragraph (ba) (ultra low sulphur diesel), for “£0.0522” substitute “ £0.0644 ”.
- (7) In section 13A(1) (rebate on unleaded petrol), for “£0.0601” substitute “ £0.0617 ”.
- (8) In section 14(1) (rebate on light oil for use as furnace oil), for “£0.0482” substitute “ £0.0604 ”.
- (9) This section comes into force on 1st September 2005.

### *Gaming duty*

## **6 Rates of gaming duty**

- (1) For the Table in section 11(2) of FA 1997 (rates of gaming duty) substitute—

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“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £534,500	2.5 per cent.
The next £1,186,500	12.5 per cent.
The next £1,186,500	20 per cent.
The next £2,078,000	30 per cent.
The remainder	40 per cent.”

- (2) This section has effect in relation to accounting periods beginning on or after 1st April 2005.

*Vehicle excise duty*

**7 Rates**

- (1) VERA 1994 is amended as follows.
- (2) In section 4 (vehicle licences: amount of duty), omit—
- (a) subsection (3)(treatment of fractions of five pence in determining rate of duty on six month licence which is set at 55% of annual rate), and
  - (b) in subsection (7)(power to amend or repeal by order), “or (3)”.
- (3) In section 13(3)(b) (trade licences: annual rate of duty for licences not to be used only for motorcycles not exceeding 450 kilograms in weight unladen) as currently in force, for “annual rate currently applicable to a vehicle under paragraph 1(2) of Schedule 1” substitute “basic goods vehicle rate currently applicable”.
- (4) In section 13(4)(b) (trade licences: annual rate of duty for licences not to be used only for motorcycles not exceeding 450 kilogrammes in weight unladen) as set out in paragraph 8(1) of Schedule 4 to have effect on and after a day appointed by order, for “annual rate currently applicable to a vehicle under paragraph 1(2) of Schedule 1” substitute “basic goods vehicle rate currently applicable”.
- (5) In both versions of section 13, after subsection (6) insert—
- “(7) In this section “the basic goods vehicle rate” means the annual rate applicable, by virtue of sub-paragraph (1) of paragraph 9 of Schedule 1, to a rigid goods vehicle which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied, and
  - (b) falls within column (3) of the table in that sub-paragraph and has a revenue weight exceeding 3,500 kilograms and not exceeding 7,500 kilograms.”
- (6) In sections 35A(5) and 36(3) (dishonoured cheques: appropriate annual rate of vehicle excise duty), for the words from “to the annual rate” to “(or)” substitute—
- “(a) in the case of a vehicle licence, to the annual rate which at the beginning of the relevant period was applicable to a vehicle of the description specified in the application, or

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- (b) in the case of a trade licence, to the basic goods vehicle rate (within the meaning of section 13) which was applicable at that time (or to the annual rate which at that time was applicable”.
- (7) Schedule 1 (annual rates of duty) is amended as follows.
- (8) In paragraph 1(2) (general rate of duty except in case of vehicle with engine with cylinder capacity not exceeding 1,549 cubic centimetres), for “£165” substitute “ £170 ”.
- (9) For the Table in paragraph 1B (rates of duty applicable to light passenger vehicles registered on or after 1st March 2001 on basis of certificate specifying CO<sub>2</sub> emissions figure) substitute—

<i>“CO<sub>2</sub> emissions figure</i>		<i>Rate</i>		
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Reduced rate</i>	<i>Standard rate</i>	<i>Premium rate</i>
g/km	g/km	£	£	£
	100	55	65	75
100	120	65	75	85
120	150	95	105	115
150	165	115	125	135
165	185	140	150	160
185		160	165	170”

- (10) In paragraph 3(1A) (rate applicable to buses with respect to which reduced pollution requirements are satisfied), for “the general rate specified in paragraph 1(2)” substitute “ £165 ”.
- (11) In paragraph 7(3A)(b) (rate applicable to haulage vehicles which are not showman's vehicles and with respect to which reduced pollution requirements are satisfied), for “the general rate specified in paragraph 1(2)” substitute “ £165 ”.
- (12) In paragraph 10 (trailer supplement)—
- in sub-paragraph (2) (rate where plated gross weight of trailer exceeds 4,000 kilograms but does not exceed 12,000 kilograms), for “an amount equal to the amount of the general rate specified in paragraph 1(2)” substitute “ £165 ”,
  - in sub-paragraph (3) (rate where plated gross weight of trailer exceeds 12,000 kilograms), for “an amount equal to 140 per cent of the amount of the general rate specified in paragraph 1(2)” substitute “ £230 ”, and
  - omit sub-paragraphs (3A) and (3B)(rounding of rate set under sub-paragraph (3) as percentage of general rate specified in paragraph 1(2)).
- (13) Subsection (2), and subsection (1) so far as relating to it, have effect on the day on which this Act is passed.
- (14) Subsection (4), and subsections (1) and (5) so far as relating to it, have effect on and after that day.

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(15) Subsection (6), and subsection (1) so far as relating to it, have effect on and after 17th March 2005.

(16) Subject to that, this section has effect in relation to licences taken out on or after 17th March 2005 for a period beginning on or after 1st April 2005.

## PART 2

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

#### CHAPTER 1

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

###### *Income tax*

#### **8 Charge and rates for 2005-06**

Income tax shall be charged for the year 2005-06, and for that year—

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

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

(1) For the year 2005-06—

- (a) the amount specified in section 257(2) of ICTA (claimant aged 65 or more) shall be £7,090; and
- (b) the amount specified in section 257(3) of that Act (claimant aged 75 or more) shall be £7,220.

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

###### *Corporation tax*

#### **10 Charge and main rate for financial year 2006**

Corporation tax shall be charged for the financial year 2006 at the rate of 30%.

#### **11 Small companies' rate and fraction for financial year 2005**

For the financial year 2005—

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

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## **12 Corporation tax starting rate and fraction for financial year 2005**

For the financial year 2005—

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

## **13 Non-corporate distribution rate for financial year 2005**

The non-corporate distribution rate for the financial year 2005 shall be 19%.

### *Trusts*

## **14 Special trust rates not to apply to first slice of trust income**

(1) In ICTA, after section 686C insert—

### **“686D Special trust rates not to apply to first slice of trust income**

- (1) This section applies where income arising (or treated as arising) to the trustees of a trust in a year of assessment consists of or includes income subject to a special trust tax rate (“the special trust tax rate income”).
- (2) “Income subject to a special trust tax rate” means any income which is (or apart from this section would be) chargeable to income tax at—
  - (a) the dividend trust rate, or
  - (b) the rate applicable to trusts.
- (3) So much of the special trust tax rate income as does not exceed £500 is not chargeable to income tax at the dividend trust rate or the rate applicable to trusts (but is instead chargeable to income tax at the basic rate, the lower rate or the dividend ordinary rate, depending on the nature of the income).
- (4) In the following provisions “the relevant purposes” means the purposes of—
  - (a) determining (in accordance with section 1A(5)) which of the special trust tax rate income is not chargeable to income tax at the dividend trust rate, or the rate applicable to trusts, by virtue of subsection (3), and
  - (b) determining at which of the basic rate, the lower rate and the dividend ordinary rate that special trust tax rate income is chargeable to income tax.
- (5) For the relevant purposes the fact that any amount forming part of the special trust tax rate income is subject to a special trust tax rate is to be disregarded if, in any circumstances, an amount of that description is chargeable on trustees at the basic rate, the lower rate or the dividend ordinary rate.
- (6) For the relevant purposes any of the special trust tax rate income that consists of—
  - (a) an amount which, by virtue of section 686A, is treated for the purposes of the Tax Acts as if it were income to which section 686 applies, or



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- (b) income treated as arising under Chapter 5 of Part 4 of ITTOIA 2005 (stock dividends from UK resident companies),

is to be regarded as income to which section 1A applies and which is chargeable at the dividend ordinary rate.
- (7) For the relevant purposes any of the special trust tax rate income that consists of—
  - (a) income treated as arising under section 761(1) (offshore income gains),
  - (b) income treated as received under section 68 of FA 1989 (employee share ownership trusts), or
  - (c) profits or gains which are treated as income under Chapter 12 of Part 4 of ITTOIA 2005 (guaranteed returns on disposals of futures and options) and in relation to which section 568 of that Act applies (profits or gains not meeting conditions of that section),

is or are to be regarded as chargeable at the basic rate.
- (8) For the relevant purposes any of the special trust tax rate income that consists of—
  - (a) income treated as received under section 714(2) or 716(3) (transfers of securities),
  - (b) profits taken to be income arising under Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities), or
  - (c) gains which are treated as arising under Chapter 9 of that Part and on which tax is charged at the rate applicable to trusts under section 467(7)(b) of that Act (gains from contracts for life assurance),

is or are chargeable at the lower rate.”
- (2) In section 686(1) of ICTA (accumulation and discretionary trusts: special rates of tax), after “shall” insert “ (subject to section 686D) ”.
- (3) In subsection (3) of section 687 of ICTA (payments under discretionary trusts: amounts to be set against amount assessable on trustees under subsection (2)(b) of that section), after paragraph (a) insert—
  - “(aa1) the amount of any tax on income arising to the trustees which is charged by virtue of section 686D(3) at the basic rate or the lower rate;”.
- (4) After that subsection insert—
  - “(3A) Paragraphs (a1) to (bc) of subsection (3) above do not apply in relation to income, distributions or sums chargeable to tax by virtue of section 686D(3) at the basic rate, the lower rate or the dividend ordinary rate.”
- (5) This section applies for the year 2005-06 and subsequent years of assessment.

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## CHAPTER 2

### PERSONAL TAXATION

#### *Taxable benefits*

#### **15      Childcare vouchers: exempt amount**

- (1) Section 270A of ITEPA 2003 (limited exemption for qualifying childcare vouchers) is amended as follows.
- (2) In subsection (6) (exempt amount), for “£50 for each qualifying week in that year” substitute “the sum of—
  - (a) £50 for each qualifying week in that year, and
  - (b) the voucher administration costs for that year.”
- (3) After that subsection insert—
 

“(6A) The “voucher administration costs” for any tax year in respect of which qualifying childcare vouchers are provided for an employee means the difference between the cost of provision of the vouchers and their face value.

The face value of a voucher is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.”
- (4) After subsection (10) insert—
 

“(10A) In this section “cost of provision”, in relation to a childcare voucher, has the meaning given in section 87(3) and (3A).”
- (5) This section has effect for the year 2005-06 and subsequent years of assessment.

#### **16      Extension of exemptions for childcare, workplace parking, cycles etc**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 237(1) (exemption for provision of workplace parking), for “No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge)” substitute “No liability to income tax arises”.
- (3) In section 244(1) (exemption for provision of cycles and cyclist's safety equipment), for “No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge)” substitute “No liability to income tax arises”.
- (4) In section 270A(1) (limited exemption for qualifying childcare vouchers), for “employee, liability” substitute “employee—
  - (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability”.
- (5) In section 318(1) (childcare: exemption for employer-provided care), for “No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge)” substitute “No liability to income tax arises”.

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- (6) In section 318A(1) (childcare: limited exemption for other care), for “child, liability” substitute “child—
  - (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability”.
- (7) This section has effect for the year 2005-06 and subsequent years of assessment.

## **17 Transfer of previously loaned computer or cycle etc**

- (1) Section 206 of ITEPA 2003 (cost of the benefit: transfer of used or depreciated asset) is amended as follows.
- (2) In subsection (3)(a), for “a car (within the meaning of Chapter 6)” substitute “ an excluded asset (see subsection (6)) ”.
- (3) After subsection (5) insert—
  - “(6) An excluded asset is—
    - (a) a car (within the meaning of Chapter 6),
    - (b) computer equipment that has previously been applied as mentioned in subsection (3)(b) in circumstances in which the conditions set out in section 320 were met, or
    - (c) a cycle or cyclist's safety equipment that has previously been so applied in circumstances in which the conditions set out in section 244 were met.”
- (4) This section has effect for the year 2005-06 and subsequent years of assessment.

## **18 Extension of outplacement services etc exemption: part-time employees**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 310 (counselling and other outplacement services) in subsection (4) (person to have been employed full-time in the employment which is ceasing for a specified period) omit “full-time”.
- (3) In section 311 (retraining courses) in subsection (3) (conditions to be satisfied in relation to the course)—
  - (a) at the end of paragraph (b) insert “ and ”;
  - (b) in paragraph (c) (course to last no more than one year) for “one year” substitute “ two years ”;
  - (c) omit paragraph (d) (employee to attend the course on a full-time or substantially full-time basis) and the word “and” before it.
- (4) In that section, in subsection (4)(c) (person to be employed full-time in the employment which is ceasing for a specified period) omit “full-time”.
- (5) This section has effect in relation to the year 2005-06 and subsequent years of assessment.

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### *Armed forces*

## **19 Armed forces pensions and compensation schemes**

- (1) ITEPA 2003 is amended as follows.
- (2) In subsection (1) of section 393 as originally enacted (application of Chapter 2 of Part 6) after “non-approved retirement benefits scheme” insert “ other than a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (armed and reserve forces compensation schemes) ”.
- (3) In paragraph (a) of section 639 (exemption from income tax for pensions due to military service etc)—
  - (a) for “the Department of Work and Pensions” substitute “ the Ministry of Defence ”;
  - (b) for “any Order in Council, Royal Warrant, order or scheme” substitute “ instrument specified in subsection (2), ”.
- (4) At the end of section 639 (which becomes subsection (1)) insert—

“(2) The instruments referred to in subsection (1)(a) are—

Defence (Local Defence Volunteers) Regulations 1940 (S.R. & O. 1940/748),

War Pensions (Coastguards) Scheme 1944 (S.R. & O. 1944/500),

War Pensions (Naval Auxiliary Personnel) Scheme 1964 (S.I. 1964/1985),

Pensions (Polish Forces) Scheme 1964 (S.I. 1964/2007),

War Pensions (Mercantile Marine) Scheme 1964 (S.I. 1964/2058),

Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard (1964 Cmnd. 2563),

Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27th April 1952 (1964 Cmnd. 2564),

Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment (1971 Cmnd. 4567),

Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686),

Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (S.I. 1983/883).

(3) The Treasury may by order amend subsection (2).”.
- (5) After section 640 insert—

### **“640A Lump sums provided under armed forces early departure scheme**

No liability to income tax arises on a lump sum provided under a scheme established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).”.

- (6) In section 641 (exemption from income tax for armed forces disability pensions etc), after paragraph (g) of subsection (1) insert—

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- “(h) a benefit under a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 payable to a person by reason of his illness or injury—
  - (i) by way of a lump sum, or
  - (ii) following the termination of the person's service in the armed forces or reserve forces.”.
- (7) The amendment made by subsection (2) has effect for the year 2005-06.
- (8) The amendments made by subsections (3) and (4) are deemed always to have had effect.
- (9) The amendments made by subsections (5) and (6) have effect for the year 2005-06 and subsequent years of assessment.

### CHAPTER 3

#### EMPLOYMENT-RELATED SECURITIES

## 20 Research institution spin-out companies

- (1) In Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities), after Chapter 4 insert—

### “CHAPTER 4A

#### SHARES IN RESEARCH INSTITUTION SPIN-OUT COMPANIES

##### *Introduction*

## 451 Application of this Chapter

- (1) This Chapter applies where—
  - (a) an agreement is made for one or more transfers of intellectual property (an “intellectual property agreement”) from one or more research institutions to a company (a “spin-out company”),
  - (b) a person acquires shares (or an interest in shares) in the spin-out company before the intellectual property agreement is made or within the period of 183 days beginning with the date on which it is made,
  - (c) the right or opportunity to acquire the shares (or interest in shares) was available by reason of employment by the research institution (or any of them) or by the spin-out company, and
  - (d) the person is involved in research in relation to any of the intellectual property that is the subject of the intellectual property agreement.
- (2) But this Chapter does not apply if the avoidance of tax or national insurance is the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the shares (or interest in shares) is made available.

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### *Tax relief on acquisition*

#### **452 Market value on acquisition**

- (1) For the relevant tax purposes the market value of the shares (or interest in shares) at the time of the acquisition is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.
- (2) For the purposes of subsection (1) “the relevant tax purposes” are—
  - (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
  - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
  - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
  - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).

### *Tax relief following acquisition*

#### **453 Taxable amount under Chapter 4**

- (1) If the shares are (or interest in shares is) acquired before the intellectual property agreement is made, or before any transfer of intellectual property pursuant to it, and any benefit deriving from the intellectual property agreement or any such transfer is received by the employee in connection with the shares (or interest in shares), the taxable amount determined under section 448 (post-acquisition benefits from securities: amount of charge) is to be treated as nil.
- (2) But this section does not apply if something which affects the shares (or interest in shares) has been done (at or before the time when the intellectual property agreement is made or intellectual property is transferred) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

### *Disapplication of Chapters 2 and 3B*

#### **454 Deemed election for disapplication of Chapter 2**

- (1) If the shares are restricted securities (or the interest in shares is a restricted interest in securities), the employer and the employee are to be treated as making an election under section 431(1) (election for disapplication of Chapter 2) in relation to the shares (or interest in shares).
- (2) But the employer and the employee may agree that subsection (1) is not to apply in relation to the shares (or interest in shares).

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- (3) An agreement under subsection (2) is irrevocable and—
  - (a) must be made in a form approved by the Board of the Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.
- (4) If the employer and the employee make an agreement under subsection (2) in relation to the shares (or interest in shares), subsection (5) applies for the purposes of determining the taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) on the occurrence on any chargeable event in relation to the shares (or interest in shares).
- (5) In determining under section 428(3) (amount of charge) what would have been the market value of the shares (or interest in shares) at the time of the acquisition but for any restrictions (IUMV), that market value is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.

#### 455 **Disapplication of Chapter 3B**

For the purposes of Chapter 3B (securities with artificially enhanced market value) neither the intellectual property agreement nor any transfer of intellectual property pursuant to it are things done otherwise than for genuine commercial purposes.

### *Supplementary*

#### 456 **Meaning of “intellectual property” and “transfer”**

- (1) In this Chapter “intellectual property” means—
  - (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997,
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value,
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c), or
  - (e) any goodwill (having the meaning that it has for accounting purposes) associated with anything within paragraphs (a) to (d).
- (2) The Treasury may by order amend the definition of “intellectual property” in subsection (1).
- (3) For the purposes of this Chapter a transfer of intellectual property includes—
  - (a) a sale of the intellectual property,
  - (b) the grant of a licence or other right in respect of it, and
  - (c) the assignment of a licence or other right in respect of it.

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#### 457 **Meaning of “research institution”**

- (1) In this Chapter “research institution” means—
  - (a) any university or other institution that is a publicly funded institution as defined in section 41(2) of the Higher Education Act 2004, or
  - (b) any institution that carries out research activities otherwise than for profit and that is neither controlled nor wholly or mainly funded by a person who carries on activities for profit.
- (2) The Treasury may by order amend subsection (1) to include in or exclude from the definition of “research institution” a person specified in the order or persons of a description specified in the order.

#### 458 **Meaning of “involved in research”**

For the purposes of this Chapter a person is involved in research in relation to any intellectual property transferred or to be transferred from one or more research institutions if—

- (a) he has been actively engaged for the research institution (or any of them) in connection with research (whether as an employee or otherwise), and
- (b) that research is relevant to anything to which the intellectual property relates.

#### 459 **Transfer of intellectual property by controlled company**

- (1) For the purposes of this Chapter where a research institution has control of a company, a transfer of intellectual property from the company is to be treated as a transfer from the research institution.
- (2) For the purposes of this Chapter where two or more research institutions together have control of a company, a transfer of intellectual property from the company is to be treated as a transfer from those research institutions.
- (3) In this section “control” means control within the meaning of section 416 of ICTA.

#### 460 **Definitions**

- (1) In this Chapter—
 

“interest”, in relation to shares, and  
 “shares”,

have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
 

“the acquisition”,  
 “the employee”, and  
 “the employer”,

have the meaning indicated in section 421B(8).



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- (4) In this Chapter—  
     “restricted interest in securities”, and  
     “restricted securities”,  
     have the meaning indicated in sections 423 and 424.”
- (2) In consequence of the amendment made by subsection (1), Chapter 1 of Part 7 of ITEPA 2003 (income and exemptions relating to securities: introduction) is amended as follows.
- (3) Substitute “ 4A ” for “4” in—  
     (a) subsections (1), (4) and (8) of section 421B,  
     (b) the heading of and the heading above that section, and  
     (c) subsections (5) and (6) of section 421D.
- (4) In section 421K(3)(g) (reportable events), after “securities” insert “ or would give rise to such an amount but for Chapter 4A (shares in research institution spin-out companies) ”.
- (5) The amendments made by this section have effect in relation to shares (or an interest in shares) acquired before an agreement for the transfer of intellectual property is made, or within the period of 183 days beginning with the date on which such an agreement is made, if—  
     (a) the date of acquisition of the shares (or interest in shares), or  
     (b) the date on which the agreement was made,  
     or both, fell on or after 2nd December 2004.
- (6) Where section 454 of ITEPA 2003 (as inserted by subsection (1)) has effect (by virtue of subsection (5)) in relation to shares (or an interest in shares) acquired before 2nd December 2004, it applies in relation to them (or it) so as to treat the election under section 431(1) as made on that date.
- (7) Where section 454 of ITEPA 2003 (as inserted by subsection (1)) has effect (by virtue of subsection (5)) in relation to shares (or an interest in shares) acquired before 1st October 2005, it has effect with the substitution in subsection (3)(b) of that section of “later than 15th October 2005” for “more than 14 days after the acquisition of the shares (or interest in shares)”.

## **21 Research institution spin-out companies: pre-2nd December 2004 cases**

- (1) Subsections (2) to (7) have effect where—  
     (a) Chapter 4A of Part 7 of ITEPA 2003 (as inserted by section 20) would apply but for subsection (5) of that section (commencement), and  
     (b) an election is made under this subsection by the employee and the employer no later than 15th October 2005.
- (2) Section 452(1) and (2)(a), (c) and (d) and section 453(1) of ITEPA 2003 apply.
- (3) But when the chargeable event occurs in relation to the shares (or interest in shares), the taxable amount counts as employment income of the employee for the tax year in which the chargeable event occurs.
- (4) The chargeable event occurs in relation to the shares (or interest in shares) on the earlier of—

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- (a) the day on which there is a disposal for consideration of the shares, or any interest in them, by an associated person otherwise than to another associated person, and
- (b) the day specified in any election made by an employee under this subsection.

(5) The taxable amount for the purposes of subsection (3) is—

$$MV - DA$$

where—

MV is the market value of the shares (or interest in shares) immediately before the occurrence of the chargeable event, and

DA is the total of any deductible amounts.

(6) Each of the following is a deductible amount—

- (a) the amount of any consideration given for the acquisition of the shares (or interest in shares),
- (b) any amount that constituted earnings from the employee's employment under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition of the shares (or interest in shares),
- (c) any amount that counted as employment income in relation to the shares (or interest in shares) under Chapter 2 or 4 of Part 7 of that Act as originally enacted otherwise than by virtue of section 457 of that Act (as originally enacted) (charge on receipt of chargeable benefit),
- (d) if the shares (or interest in shares) were (or was) acquired on a conversion of other shares (or of another interest in shares), any amount that counted as employment income of the employee under Chapter 3 of that Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion,
- (e) if the acquisition of the shares (or interest in shares) was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 of that Act (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition, and
- (f) in the case of a chargeable event under subsection (4)(a), the amount of any expenses incurred by the holder of the shares (or interest in shares) in connection with the disposal.

(7) An election under subsection (1) or (4) is irrevocable and must be made in a form approved by the Board of Inland Revenue.

(8) The Treasury may by regulations modify—

- (a) this section,
- (b) any provision of Part 4 of TCGA 1992, and
- (c) any provision of Part 7 of ITEPA 2003,

in relation to shares (or interests in shares) to which Chapter 4A of that Part would apply but for section 20(5) and which are restricted securities (or restricted interests in securities) or convertible securities (or interests in convertible securities).

(9) The power conferred by subsection (8) is exercisable by statutory instrument.

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(10) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of the House of Commons.

(11) In this section—

“associated person” has the same meaning as in Chapters 1 to 5 of Part 7 of ITEPA 2003 (see section 421C of that Act),

“Board of Inland Revenue” has the same meaning as in that Act (see section 720(2) of that Act), and

“convertible securities” has the same meaning as in Chapter 3 of Part 7 of that Act (see section 436 of that Act),

and expressions used in this section and in Chapter 4A of Part 7 of that Act have the same meaning in this section as in that Chapter.

## 22 Capital gains

(1) TCGA 1992 is amended as follows.

(2) In section 119A(3) (increase in expenditure by reference to tax charged in relation to employment-related securities: events giving rise to relevant income tax charge)—

(a) after “employment income” insert “ in respect of the employment-related securities ”,

(b) for the word “or” at the end of paragraph (c) substitute—

“(ca) under section 447 of ITEPA 2003 (receipt of benefit) in a case where the benefit is an increase in the market value of the employment-related securities,”,

(c) after paragraph (d) insert “or—

(e) under subsection (3) of section 21 of the Finance Act 2005 (transitional charge in relation to shares in spin-out companies) by virtue of subsection (4)(b) of that section (election by employee).”, and

(d) omit the words following the paragraphs.

(3) After section 149AA insert—

### “149AB Shares in research institution spin-out companies

(1) Where an individual has acquired shares (or an interest in shares) in circumstances where section 452(1) and (2)(a) of ITEPA 2003 (shares in research institution spin-out companies: market value on acquisition) apply (and section 149AA does not apply in relation to those shares (or interest in shares)) the consideration for the acquisition shall (subject to section 119A) be taken to be equal to the aggregate of—

(a) the actual amount or value given for the shares (or interest in shares), and

(b) any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition.

(2) Subsection (1) above applies only to the individual making the acquisition and, accordingly, is to be disregarded in calculating the consideration received by the person from whom the shares (or interest in shares) are (or is) acquired.”

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- (4) The amendment made by paragraph (b) of subsection (2) has effect only in relation to disposals on or after 6th April 2005; but the other amendments made by that subsection have effect in relation to any disposal (whether before or after the passing of this Act).
- (5) The amendment made by subsection (3) has effect in relation to any acquisition (whether before or after the passing of this Act).

## CHAPTER 4

### TRUSTS WITH VULNERABLE BENEFICIARY

#### *Introductory*

## 23 Introduction

- (1) This Chapter contains tax provision in connection with—
  - (a) income arising to [<sup>F1</sup>the trustees of a settlement] from property held on qualifying trusts for the benefit of a vulnerable person, and
  - (b) chargeable gains accruing to [<sup>F2</sup>the trustees of a settlement] from the disposal of such property.
- (2) Section 24 contains provision as to the making of claims for special tax treatment under this Chapter.
- (3) Sections 25 to 29 contain provision relating to income tax.
- (4) Sections 30 to 33 contain provision relating to capital gains tax.
- (5) Sections 34 to 36 apply for the purpose of determining whether trusts on which property is held for the benefit of a vulnerable person are qualifying trusts.
- (6) In this Chapter “vulnerable person election” means an election under section 37.
- (7) In this Chapter “vulnerable person” means—
  - (a) a disabled person (see section 38), or
  - (b) a relevant minor (see section 39).

#### Textual Amendments

- F1** Words in s. 23(1)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(a\)\(7\)](#)
- F2** Words in s. 23(1)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(a\)\(7\)](#)

## 24 Entitlement to make claim for special tax treatment

A claim for special tax treatment under this Chapter for a tax year may be made by [<sup>F3</sup>the trustees of a settlement] if—

- (a) in the tax year they hold property on qualifying trusts for the benefit of a vulnerable person, and

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- (b) a vulnerable person election has effect for all or part of the tax year in relation to those trusts and that person.

#### Textual Amendments

- F3** Words in s. 24(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(b\)\(7\)](#)

### Income tax

## 25 Qualifying trusts income: special income tax treatment

- (1) This section has effect in relation to a tax year if—
- (a) in the tax year income arises (or is treated as arising) to [<sup>F4</sup>the trustees of a settlement] from property held on qualifying trusts for the benefit of a vulnerable person (“qualifying trusts income”), and
  - (b) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.
- (2) Special income tax treatment applies for the tax year in accordance with sections 26 to 29.
- (3) But this section does not have effect in relation to the tax year if the property from which the qualifying trusts income arises (or is treated as arising) is property in which a person who is a settlor (within the meaning given by [<sup>F5</sup>section 620(1) of ITTOIA 2005]) is regarded as having an interest for the purposes of [<sup>F6</sup>sections 624 and 625 of that Act] (income arising under settlement where settlor retains an interest).

#### Textual Amendments

- F4** Words in s. 25(1)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(c\)\(7\)](#)
- F5** Words in s. 25(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(3\)\(a\)\(7\)](#)
- F6** Words in s. 25(3) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(3\)\(b\)\(7\)](#)

## 26 Amount of relief

The trustees' liability to income tax for the tax year is to be reduced by an amount equal to—

$$TQTI - VQTI$$

where—

TQTI is an amount determined in accordance with section 27 (income tax liability of trustees in respect of qualifying trusts income), and

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VQTI is an amount determined in accordance with section 28 (extra tax to which vulnerable person would be liable if qualifying trusts income were income of his).

## 27 Trustees' liability: TQTI

- (1) For the purposes of section 26, TQTI is the amount of income tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year (or to which they would be so liable if their liability were computed in accordance with subsection (2) in a case to which that subsection applies).
- (2) In a case where—
  - (a) income arising (or treated as arising) to the trustees in the tax year (“total income”) includes income (“other income”) which is not qualifying trusts income, and
  - (b) the trustees have any expenses in the tax year (“the management expenses”) which are properly chargeable to [<sup>F7</sup>income] or would be so chargeable but for any express provisions of the trusts,

there shall be disregarded, in computing the income tax liability of the trustees for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year, such part of the management expenses as bears the same proportion to all those expenses as other income bears to total income.
- (3) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

### Textual Amendments

- F7** Word in s. 27(2)(b) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 35\(4\)\(7\)](#)

## 28 Vulnerable person's liability: VQTI

- (1) For the purposes of section 26, VQTI is an amount equal to—

$$TLV1 - TLV2$$

where—

TLV2 is an amount determined in accordance with subsection (2) (and subsection (4) where it applies) (total tax liability of vulnerable person), and

TLV1 is an amount determined in accordance with subsection (3) (and subsection (4) where it applies) (what total tax liability of vulnerable person would be if his income included qualifying trusts income).

- (2) TLV2 is the total amount of income tax and capital gains tax to which the vulnerable person would be liable for the tax year if his income tax liability were computed in accordance with subsections (5) and (6).

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- (3) TLV1 is what TLV2 would be if the qualifying trusts income arising (or treated as arising) to the trustees in the tax year in respect of which the trustees are liable to income tax were income of the vulnerable person for the tax year.
- (4) Where the vulnerable person is non-UK resident during the tax year—
  - (a) his income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that he is resident and domiciled in the United Kingdom throughout the tax year, and
  - (b) his capital gains tax liability for the purposes of determining TLV1 and TLV2 is to be computed on the assumption that his taxable amount for the purposes of section 3 of TCGA 1992 is equal to his deemed CGT taxable amount.
- (5) For the purposes of this section, in a case where income which has arisen to the trustees (whenever it arose) is distributed to the vulnerable person in the tax year, that income is to be disregarded in computing income tax to which he would be liable for the tax year for the purposes of determining TLV1 and TLV2.
- (6) For the purposes of this section, in computing income tax to which the vulnerable person would be liable for the tax year for the purposes of determining TLV1 and TLV2, there is to be disregarded any relief which is given by way of a reduction in the amount of income tax to which the vulnerable person would be liable apart from that relief.
- (7) For the purposes of this section—
  - (a) whether or not a vulnerable person is non-UK resident is to be determined in accordance with section 41(2), and
  - (b) a non-UK resident vulnerable person's deemed CGT taxable amount is to be determined in accordance with paragraph 3 of Schedule 1.
- (8) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

## [<sup>F8</sup>28A Disapplication of section 629 of ITTOIA 2005

- (1) In a case where this section applies, section 629(1) of ITTOIA 2005 shall not apply in respect of a payment by the trustees of a settlement to a beneficiary under the settlement.
- (2) This section applies if in a year of assessment—
  - (a) the trustees make a payment to a vulnerable person,
  - (b) the payment is made out of qualifying trusts income,
  - (c) the vulnerable person is a relevant child (within the meaning given by section 629 of ITTOIA 2005) of a settlor in relation to the settlement, and
  - (d) the trustees have made a successful claim for special income tax treatment under section 25.]

### Textual Amendments

- F8** S. 28A inserted (with effect in accordance with Sch. 13 para. 36(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 36\(1\)](#)

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## 29 Part years

- (1) Where the vulnerable person election has effect for only part of the tax year (“the elected part of the tax year”) sections 26, 27 and 28 apply with the modifications in subsection (2).
- (2) Those modifications are—
  - (a) that references to the qualifying trusts income arising (or treated as arising) to the trustees in the tax year are to be treated as references to the qualifying trusts income arising (or treated as arising) to them in the elected part of the tax year, and
  - (b) that the references in section 27(2) to income arising (or treated as arising) to the trustees in the tax year and expenses of the trustees in the tax year are to be treated as (respectively) references to income arising (or treated as arising) to the trustees in the elected part of the tax year and expenses of the trustees in that part of the tax year.

### *Capital gains tax*

## 30 Qualifying trusts gains: special capital gains tax treatment

- (1) This section has effect in relation to a tax year if—
  - (a) in the tax year chargeable gains accrue to the trustees of a settlement from the disposal of settled property which is held on qualifying trusts for the benefit of a vulnerable person (“the qualifying trusts gains”),
  - (b) the trustees would (apart from this Chapter) be chargeable to capital gains tax in respect of those gains,
  - (c) the trustees are either resident in the United Kingdom during any part of the tax year or ordinarily resident in the United Kingdom during the tax year, and
  - (d) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.

[<sup>F9</sup>(1A) For the purposes of subsection (1)(b) the effect of section 77(1) of TCGA 1992 shall be disregarded if the settlor is treated as having an interest in the settlement by reason only of the application of section 77(2A) of that Act.]

- (2) Special capital gains tax treatment applies for the tax year in accordance with—
  - (a) section 31 (vulnerable person UK resident during the tax year), or
  - (b) section 32 (vulnerable person non-UK resident during the tax year).

- (3) But this section does not have effect in relation to the tax year if the vulnerable person dies during that year.

[<sup>F10</sup>(3A) If this section has effect in relation to chargeable gains accruing to the trustees of a settlement in a tax year, section 77 of TCGA 1992 shall not have effect in relation to the gains, (but this subsection shall not affect the operation of section 31(2)).]

- (4) The reference in subsection (1)(a) to chargeable gains accruing to the trustees from the disposal of settled property includes a reference to chargeable gains treated as accruing to them under section 13 of TCGA 1992 (attribution of gains to members of non-resident companies).



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- (5) For the purposes of this section and sections 31 and 32 whether a vulnerable person is UK resident or non-UK resident during a tax year is to be determined in accordance with section 41(2).

#### Textual Amendments

- F9** S. 30(1A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(1\)\(a\)\(5\)](#)  
**F10** S. 30(3A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(1\)\(b\)\(5\)](#)

### 31 UK resident vulnerable persons: section 77 treatment

- (1) Special capital gains tax treatment applies for the tax year in accordance with this section if the vulnerable person is UK resident during the tax year.
- (2) Section 77(1) (and section 78 and section 79, apart from subsection (6)) of TCGA 1992 are to be treated as applying in relation to the qualifying trusts gains as if—
- (a) the vulnerable person were a settlor in relation to the settlement,
  - (b) the settled property disposed of, and any other settled property disposed of at any time when it was relevant settled property, originated from him, and
  - (c) he had an interest in the settlement during the tax year.
- (3) For the purposes of subsection (2)(b), property is “relevant settled property” at any time when—
- (a) it is property held on the qualifying trusts for the benefit of the vulnerable person, and
  - (b) the trustees would (apart from this Chapter) be chargeable to capital gains tax in respect of any chargeable gains accruing to them on a disposal of it.

### 32 Non-UK resident vulnerable persons: amount of relief

- (1) Special capital gains tax treatment applies for the tax year in accordance with this section if the vulnerable person is non-UK resident during the tax year.
- (2) The trustees' liability to capital gains tax for the tax year is to be reduced by an amount equal to—

$$\text{TQTG} - \text{VQTG}$$

where—

TQTG is the amount of capital gains tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts gains, and

VQTG is an amount determined in accordance with section 33 (extra tax to which vulnerable person would be liable for the tax year if chargeable gains were treated as accruing to him under section 77(1) of TCGA 1992 by virtue of section 31 above).

### 33 Vulnerable person's liability: VQTG

- (1) For the purposes of section 32, VQTG is an amount equal to—

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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

## TLVA – TLVB

where—

TLVB is an amount determined in accordance with subsection (2) (total tax liability of vulnerable person), and

TLVA is an amount determined in accordance with subsection (3) (what total tax liability of vulnerable person would be if it included tax in respect of notional section 77 gains).

- (2) TLVB is the total amount of income tax and capital gains tax to which the vulnerable person would be liable for the tax year—
  - (a) if his income for the tax year were equal to the sum of his actual income for the tax year (if any) and the amount of the trustees' specially taxed income (if any) for the tax year, and
  - (b) if his taxable amount for the tax year for the purposes of section 3 of TCGA 1992 were equal to his deemed CGT taxable amount for the tax year (if any).
- (3) TLVA is what TLVB would be if the vulnerable person's taxable amount for the tax year for the purposes of section 3 of TCGA 1992 were equal to the sum of the amount mentioned in subsection (2)(b) and his notional section 77 gains for the tax year.
- (4) For the purposes of this section—
  - (a) the vulnerable person's actual income for the tax year,
  - (b) the trustees' specially taxed income for the tax year,
  - (c) the vulnerable person's deemed CGT taxable amount for the tax year, and
  - (d) the vulnerable person's notional section 77 gains for the tax year,
 are to be determined in accordance with Schedule 1.

### *Qualifying trusts*

#### **34 Disabled persons**

- (1) For the purposes of this Chapter where property is held on trusts for the benefit of a disabled person those trusts are qualifying trusts if they secure that the conditions in subsection (2) are met—
  - (a) during the lifetime of the disabled person, or
  - (b) until the termination of the trusts (if that occurs before his death).
- (2) Those conditions are—
  - (a) that if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person, and
  - (b) either that the disabled person is entitled to all the income (if there is any) arising from any of the property or that no such income may be applied for the benefit of any other person.
- (3) The trusts on which property is held are not to be treated as failing to secure that the conditions in subsection (2) are met by reason only of <sup>F11</sup>—

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- (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958) (powers of advancement),
  - (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
  - (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).]
- (4) The reference in subsection (1) to the lifetime of the disabled person is, where property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), to be construed as a reference to the period during which such property is held on trust for him.

#### Textual Amendments

**F11** S. 34(3)(a)-(c) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(2\)\(5\)](#)

### 35 Relevant minors

- (1) For the purposes of this Chapter where property is held on trusts for the benefit of a relevant minor those trusts are qualifying trusts if they are—
- (a) statutory trusts for the relevant minor under sections 46 and 47(1) of the Administration of Estates Act 1925 (c. 23) (succession on intestacy and statutory trusts in favour of relatives of intestate), or
  - (b) trusts to which subsection (2) below applies.
- (2) This subsection applies to trusts—
- (a) established under the will of a deceased parent of the relevant minor, or
  - (b) established under the Criminal Injuries Compensation Scheme,
- which secure that the conditions in subsection (3) are met.
- (3) Those conditions are—
- (a) that the relevant minor will, on attaining the age of 18, become absolutely entitled to the property, any income arising from it and any income that has arisen from property held on the trusts for his benefit and been accumulated before that time,
  - (b) that, until that time, for so long as the relevant minor is living, if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor, and
  - (c) that, until that time, for so long as the relevant minor is living, either—
    - (i) the relevant minor is entitled to all the income (if there is any) arising from any of the property, or
    - (ii) no such income may be applied for the benefit of any other person.
- (4) Trusts to which subsection (2) applies are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of <sup>F12</sup>—

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- (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958) (powers of advancement),
  - (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
  - (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).]
- (5) In this section “the Criminal Injuries Compensation Scheme” means—
- (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995 (c. 53),
  - (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, or
  - (c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I. 1)).

#### Textual Amendments

- F12** S. 35(4)(a)-(c) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(3\)\(5\)](#)

### 36 Parts of assets

For the purposes of this Chapter references to property being held on trusts include references to a part of an asset being held on trusts if—

- (a) that part of the asset, and
- (b) any income arising from it (or treated as arising from it),

can be identified for the purpose of determining whether the trusts on which it is held are qualifying trusts.

#### *Vulnerable persons*

### 37 Vulnerable person election

- (1) Where [<sup>F13</sup>the trustees of a settlement] hold property on trusts for the benefit of a person, the trustees and that person may jointly make a vulnerable person election in relation to those trusts and that person if—
- (a) the person in relation to whom the election is made is a vulnerable person, and
  - (b) the trusts in relation to which the election is made are qualifying trusts.
- (2) A vulnerable person election is an election in such form as the Board of Inland Revenue may require—
- (a) specifying the date from which it is to have effect (“the effective date”),
  - (b) made by notice to the Inland Revenue no later than 12 months after 31st January next following the tax year in which the effective date falls, or within such further time, if any, as the Board of Inland Revenue may by notice have allowed, and

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- (c) containing the items specified in subsection (3).
- (3) Those items are—
  - (a) such information as the Board of Inland Revenue may require, including in particular information relating to the trusts, the trustees, the vulnerable person and his entitlement under the trusts and any other person connected with the trusts,
  - (b) a statement that the trusts in relation to which the election is made are qualifying trusts,
  - (c) a declaration that all the information contained in the election is correct to the best of the knowledge and belief of the trustees and vulnerable person,
  - (d) a declaration by the vulnerable person that he authorises the trustees to make any claim under this Chapter for any tax year as they consider appropriate, and
  - (e) such other declarations as the Board of Inland Revenue may reasonably require.
- (4) A vulnerable person election is irrevocable.
- (5) A vulnerable person election has effect from the effective date until one of the following events occurs—
  - (a) the person in relation to whom the election is made ceases to be a vulnerable person,
  - (b) the trusts in relation to which the election is made cease to be qualifying trusts, and
  - (c) the trusts are terminated.
- (6) If the trustees become aware that an event mentioned in subsection (5) has occurred—
  - (a) they must inform the Inland Revenue that the vulnerable person election has ceased to have effect, and
  - (b) they must do so by giving notice containing particulars of the event within the period of 90 days beginning on the date on which they first become aware that the event has occurred.
- [<sup>F14</sup>(7) Where—
  - (a) a vulnerable person election has effect in relation to qualifying trusts,
  - (b) the property held on those trusts is treated for the purposes of TCGA 1992 and of the Tax Acts as comprised in a sub-fund settlement, and
  - (c) the vulnerable person election was not made by the trustees of the sub-fund settlement,

the vulnerable person election shall have effect, in relation to the trusts mentioned in paragraph (a), in respect of matters arising at or after the time when the sub-fund election is treated as having taken effect, as if it had been made by the trustees of the sub-fund settlement and the vulnerable person.
- (8) In relation to matters arising before the time when the sub-fund election is treated as having taken effect, nothing in subsection (7)—
  - (a) relieves the trustees of the settlement which is the principal settlement in relation to the sub-fund settlement of their obligation under subsection (6), or
  - (b) prevents a notice from being given to those trustees under section 40(1) or (3).
- (9) In this section—

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- (a) “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
- (b) “sub-fund election” has the meaning given by paragraph 2 of that Schedule,
- (c) “sub-fund settlement” has the meaning given by paragraph 1 of that Schedule, and
- (d) the time when a sub-fund election is treated as having taken effect shall be the time when it is treated as having taken effect under paragraph 2 of that Schedule.]

#### Textual Amendments

**F13** Words in s. 37(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(d\)\(7\)](#)

**F14** S. 37(7)-(9) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(4\)\(5\)](#)

### 38 Meaning of “disabled person”

- (1) In this Chapter “disabled person” means—
  - (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 (c. 20) is incapable of administering his property or managing his affairs, or
  - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (2) A person is to be treated as a disabled person under subsection (1)(b) if he satisfies the Inland Revenue—
  - (a) that if he were to meet the prescribed conditions as to residence under section 64(1) of SSCBA 1992 or section 64(1) of SSCB(NI)A 1992 he would be entitled to receive attendance allowance, or
  - (b) that if he were to meet the prescribed conditions as to residence under section 71(6) of SSCBA 1992 or section 71(6) of SSCB(NI)A 1992 he would be entitled to receive a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (3) A person who is (or is treated as) a disabled person under subsection (1)(b) is not to cease to be (or to be treated as) such a disabled person by reason only of provision made by—
  - (a) regulations under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in a hospital or is provided with certain accommodation), or
  - (b) regulations under section 72(8) of SSCBA or section 72(8) SSCB(NI)A 1992 (no payment of disability allowance for persons for whom certain accommodation is provided).
- (4) In this section “attendance allowance” means an allowance under—
  - (a) section 64 of SSCBA 1992, or
  - (b) section 64 of SSCB(NI)A 1992.
- (5) In this section “disability living allowance” means a disability living allowance under—

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- (a) section 71 of SSCBA 1992, or
- (b) section 71 of SSCB(NI)A 1992.

(6) In this section—

“SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4), and

“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

### 39 Meaning of “relevant minor”

For the purposes of this Chapter a person is a “relevant minor” if—

- (a) he has not yet attained the age of 18, and
- (b) at least one of his parents has died.

*Miscellaneous and supplementary*

### 40 Power to make enquiries

- (1) Where a vulnerable person election has been made the Inland Revenue may by notice require the trustees or the vulnerable person by whom the election was made to furnish them with such particulars as they may reasonably require for the purposes of determining—
  - (a) whether the requirements mentioned in subsection (1)(a) and (b) of section 37 were met at the time the election was made, and
  - (b) whether an event mentioned in subsection (5) of that section has occurred since the effective date.
- (2) The notice must specify the time within which the information must be furnished (not being less than 60 days).
- (3) If the Board of Inland Revenue determine—
  - (a) that either or both of the requirements mentioned in subsection (1)(a) and (b) of section 37 were not met at the time the election was made, or
  - (b) that an event mentioned in subsection (5) of that section has occurred since the effective date of the election,
 they may give notice to the trustees and the person in relation to whom the vulnerable person election was made that the election never had effect or ceased to have effect from a date specified in the notice.
- (4) A person aggrieved by a determination of the Board of Inland Revenue under subsection (3) may by notice appeal to the General Commissioners.
- (5) The notice of appeal must be given to the Board of Inland Revenue within 30 days after the notice of the determination was given under subsection (3).
- (6) 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 a determination under subsection (3) (despite any limitation on the time within which any adjustment may be made).
- (7) In subsection (6) “tax” means income tax or capital gains tax.

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## 41 Interpretation etc.

### (1) In this Chapter—

“the Board of Inland Revenue” means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)),

“the Inland Revenue” means any officer of the Board of Inland Revenue,  
“notice” means notice in writing, and

“tax year”—

- (a) in relation to income tax, means a year of assessment within the meaning of ICTA (see section 832(1) of that Act), and
- (b) in relation to capital gains tax, means a year of assessment within the meaning of TCGA 1992 (see section 288(1) of that Act).

### (2) For the purposes of this Chapter—

- (a) a vulnerable person is UK resident during a tax year if he is either resident in the United Kingdom during any part of the tax year or ordinarily resident in the United Kingdom during the tax year, and
- (b) a vulnerable person is non-UK resident during a tax year if he is neither resident in the United Kingdom during any part of the tax year nor ordinarily resident in the United Kingdom during the tax year.

### (3) Sections 30 to 33 and Schedule 1 are to be construed as one with TCGA 1992.

### (4) To the extent that any provision of this Chapter would not, apart from this subsection, form part of Income Tax Acts, the provisions of the Income Tax Acts are to apply for the purposes of any references in the provision relating to income arising (or treated as arising) to a person or to the income tax liability of a person.

## 42 Application in relation to Scotland

### (1) This Chapter applies in relation to Scotland with the following modifications.

### (2) In section 23(5), for “trusts on which property is held for the benefit of a vulnerable person are qualifying trusts” substitute “property held in trust for the benefit of a vulnerable person is held in qualifying trust”.

### (3) In section 31(3)(a), for “on the qualifying trusts” substitute “in qualifying trust (in the same trust as the settled property disposed of)”.

### (4) In section 34—

- (a) in subsection (1), for “those trusts are qualifying trusts if they” substitute “the property is held in qualifying trust if the trust purposes”, and
- (b) in subsection (4), for “on trusts” substitute “in a trust”.

### (5) In section 35—

- (a) in subsection (1), for “those trusts are qualifying trusts if they are” substitute “the property is held in qualifying trust if the trust is”,

<sup>F15</sup>(b) .....

- (c) in subsection (2), before “which” insert “the purposes of”.

### (6) In section 36, for “the trusts on which it is held are qualifying trusts” substitute “it is held in qualifying trust”.



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(7) In section 37—

- (a) in subsection (1), for paragraph (b) substitute—
  - “(b) property held in the trust in relation to which the election is made is held in qualifying trust.”,
- (b) in subsection (3)(b), for “the trusts in relation to which the election is made are qualifying trusts” substitute “property held in the trust in relation to which the election is made is held in qualifying trust”, and
- (c) in subsection (5), for paragraph (b) substitute—
  - “(b) property held in the trust in relation to which the election is made ceases to be held in qualifying trust.”.

(8) Sections 34(3) and 35(4) do not apply to Scotland

(9) Unless otherwise modified by this section, any reference to anything being held on trusts is to be construed as a reference to it being held in trust.

(10) Unless otherwise modified or disapplied by this section, any reference to trusts is to be construed as a reference to a trust or the trust (as appropriate).

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**Textual Amendments**

**F15** S. 42(5)(b) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(5\)\(7\)](#), [Sch. 26 Pt. 3\(15\)](#)

#### **43 Penalties under TMA 1970**

- (1) Section 98 of TMA 1970 (special returns, etc) is amended as follows.
- (2) In the first column of the table insert at the appropriate place— “ section 40(1) of the Finance Act 2005 ”.
- (3) In the second column of the table insert at the appropriate place— “ section 37(3) of the Finance Act 2005; ”, and “ section 37(6) of the Finance Act 2005; ”.
- (4) For the purposes of that section, any information, statements or declarations given or made jointly by [<sup>F16</sup>the trustees of a settlement] and a vulnerable person are to be treated as given or made by the trustees.

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**Textual Amendments**

**F16** Words in s. 43(4) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(6\)\(7\)](#)

#### **44 Consequential amendments**

- (1) In section 687(3) of ICTA (payments under discretionary trusts: amounts to be set off against income tax assessable on trustees in respect of tax credit), after paragraph (k) insert—
  - “(l) the amount of any income tax determined in accordance with section 26 of the Finance Act 2005.”

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- (2) In Schedule 4B to TCGA 1992 (transfers of value by trustees linked with trustee borrowing), in paragraph 3(2), after “in that year” insert “ (otherwise than by virtue of section 31 of the Finance Act 2005) ”.

## 45 Commencement

This Chapter has effect for the tax year beginning on 6th April 2004 and subsequent tax years.

## CHAPTER 5

### ALTERNATIVE FINANCE ARRANGEMENTS

#### *Introductory*

## 46 Alternative finance arrangements

- (1) In this Chapter “alternative finance arrangements” means arrangements falling within section 47 [<sup>F17</sup>, 47A,][<sup>F18</sup>, 49 or 49A].
- (2) In this Chapter “financial institution” means—
- (a) a bank as defined by section 840A of ICTA,
  - (b) a building society within the meaning of the Building Societies Act 1986 (c. 53),
  - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b),
  - (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 (c. 39) to carry on a consumer credit business or consumer hire business within the meaning of that Act, or
  - (e) a person authorised in a jurisdiction outside the United Kingdom to receive deposits or other repayable funds from the public and to grant credits for its own account.
- (3) For the purposes of subsection (2)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except the parent and the parent's wholly-owned subsidiaries or persons acting on behalf of the parent or the parent's wholly-owned subsidiaries.

#### Textual Amendments

**F17** Words in s. 46(1) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(1\)](#)

**F18** Words in s. 46(1) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(1\)](#)

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### *Arrangements giving rise to alternative finance return*

#### **47 Alternative finance arrangements: [<sup>F19</sup>purchase and re-sale]**

- (1) Subject to subsection (3) and section 52, arrangements fall within this section if they are arrangements entered into between two persons under which—
  - (a) a person (“X”) purchases an asset and sells it, either immediately or in circumstances in which the conditions in subsection (2) are met, to the other person (“Y”),
  - (b) the amount payable by Y in respect of the sale (“the sale price”) is greater than the amount paid by X in respect of the purchase (“the purchase price”),
  - (c) all or part of the sale price is not required to be paid until a date later than that of the sale, and
  - (d) the difference between the sale price and the purchase price equates, in substance, to the return on an investment of money at interest.
- (2) The conditions referred to in subsection (1)(a) are—
  - (a) that X is a financial institution, and
  - (b) that the asset referred to in that provision was purchased by X for the purpose of entering into arrangements falling within this section.
- (3) Arrangements do not fall within this section unless at least one of the parties is a financial institution.
- (4) For the purposes of this section “the effective return” is so much of the sale price as exceeds the purchase price.
- <sup>F20</sup>(5) .....
- (6) If under arrangements falling within this section the whole of the sale price is paid on one day, that sale price is to be taken [<sup>F21</sup>for the purposes of this Chapter] to include alternative finance return equal to the effective return.
- (7) If under arrangements falling within this section the sale price is paid by instalments, each instalment is to be taken [<sup>F22</sup>for the purposes of this Chapter] to include alternative finance return equal to the appropriate amount.
- (8) The appropriate amount, in relation to any instalment, is an amount equal to the interest that would have been included in the instalment if—
  - (a) the effective return were the total interest payable on a loan by X to Y of an amount equal to the purchase price,
  - (b) the instalment were a part repayment of the principal with interest, and
  - (c) the loan were made on arm's length terms and accounted for under generally accepted accounting practice.

#### **Textual Amendments**

- F19** Words in s. 47 heading substituted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(c\)](#)
- F20** S. 47(5) repealed (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(a\), Sch. 26 Pt. 3\(17\)](#)
- F21** Words in s. 47(6) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(b\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)*

**F22** Words in s. 47(7) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(2\)\(b\)](#)

**[<sup>F23</sup>47A Alternative finance arrangements: diminishing shared ownership]**

- (1) Subject to section 52, arrangements fall within this section if under them—
  - (a) a financial institution acquires a beneficial interest in an asset, and
  - (b) another person (“the eventual owner”)—
    - (i) also acquires a beneficial interest in the asset,
    - (ii) is to make payments to the financial institution amounting in aggregate to the consideration paid for the acquisition of its beneficial interest,
    - (iii) is to acquire the financial institution's beneficial interest (whether or not in stages) as a result of those payments,
    - (iv) is to make other payments to the financial institution (whether in pursuance of a lease forming part of the arrangements, or otherwise),
    - (v) has the exclusive right to occupy or otherwise use the asset,
    - (vi) is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, any increase in the asset's value).
- (2) For the purposes of subsection (1)(a) it is immaterial—
  - (a) whether or not the financial institution acquires its beneficial interest from the eventual owner,
  - (b) whether the eventual owner or another person other than the financial institution also has a beneficial interest in the asset, and
  - (c) whether or not the financial institution also has a legal interest in the asset.
- (3) Subsection (1)(b)(v) does not prevent the eventual owner from granting an interest or right in relation to the asset to someone other than—
  - (a) the financial institution,
  - (b) a person controlled by the financial institution within the meaning of section 840 of ICTA, and
  - (c) a person controlled by a person who also controls the financial institution, in each case within the meaning of section 840 of ICTA;

provided that the grant is not required by the financial institution or by arrangements to which the financial institution is party.
- (4) Subsection (1)(b)(vi) does not prevent the financial institution from having responsibility for, or a share in any loss arising out of, any reduction in the asset's value (and subsection (1)(b)(ii) is subject to this subsection).
- (5) Payments by the eventual owner under arrangements to which this section applies are alternative finance return for the purposes of this Chapter except in so far as they amount to—
  - (a) payments of the kind described in subsection (1)(b)(ii), or
  - (b) payments in respect of any arrangement fee or legal or other costs or expenses which the eventual owner is required under the arrangements to pay.
- (6) Arrangements to which this section applies shall not be treated as a partnership for the purposes of the Taxes Acts (within the meaning of the Taxes Management Act 1970).]

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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

### Textual Amendments

**F23** S. 47A inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006](#) (c. 25), s. 96(3)

## 48 Arrangements within section 47: foreign currency and non-residents

- (1) If alternative finance return is paid in a currency other than sterling—
  - (a) by or to a person other than a company, and
  - (b) otherwise than for the purposes of a trade, profession or vocation or a property business,then, as respects that person, the effective return for the purposes of section 47 and the appropriate amount for the purposes of subsection (7) of that section are to be calculated in the other currency and the amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.
- (2) In section 148 of FA 2003 (meaning of “permanent establishment”) after subsection (5) insert—

“(5A) Where alternative finance return as defined by subsection (5) of section 47 of the Finance Act 2005 is paid to a company that is not resident in the United Kingdom, the company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the arrangements falling within that section by the other party to the arrangements or by any other person acting for the company in relation to the arrangements.”
- (3) In section 127 of FA 1995 (persons not treated as UK representatives) in subsection (1), at the end of paragraph (c) but before the “and” insert—

“(cc) where the income consists of alternative finance return, as defined by subsection (5) of section 47 of the Finance Act 2005, the other party to the arrangements falling within that section or any other person acting for the non-resident in relation to the arrangements;”.

*Arrangements giving rise to profit share return*

## 49 Alternative finance arrangements: [<sup>F24</sup>deposit]

- (1) Subject to section 52, arrangements fall within this section if they are arrangements under which—
  - (a) a person (“the depositor”) deposits money with a financial institution,
  - (b) the money, together with money deposited with the institution by other persons, is used by the institution with a view to producing a profit,
  - (c) from time to time the institution makes or credits a payment to the depositor, in proportion to the amount deposited by him, out of any profit resulting from the use of the money, and
  - (d) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

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[<sup>F25</sup>(2) Amounts paid or credited as mentioned in subsection (1)(c) by a financial institution under arrangements falling within this section are profit share return for the purposes of this Chapter.]

#### Textual Amendments

**F24** Word in s. 49 heading substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(2\)\(b\)](#)

**F25** S. 49(2) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(2\)\(a\)](#)

### [<sup>F26</sup>49A Alternative finance arrangements: profit share agency

- (1) Subject to section 52, arrangements fall within this section if they are arrangements under which—
  - (a) a person (“the principal”) appoints a financial institution as his agent,
  - (b) the agent uses money provided by the principal with a view to producing a profit,
  - (c) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
  - (d) the agent is entitled to any additional profits resulting from the use of the money (and may also be entitled to a fee to be paid by the principal), and
  - (e) payments in pursuance of the entitlement specified in paragraph (c) equate, in substance, to the return on an investment of the money at interest.
- (2) Amounts paid or credited by a financial institution in accordance with an entitlement of the kind specified in subsection (1)(c) are profit share return for the purposes of this Chapter.
- (3) The principal shall not be treated for the purposes of the Tax Acts as entitled to profits to which the agent is entitled in accordance with subsection (1)(d).]

#### Textual Amendments

**F26** S. 49A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(3\)](#)

### *Treatment of alternative finance arrangements*

## 50 Treatment of alternative finance arrangements: companies

- (1) Where a company is a party to arrangements falling within section 47 [<sup>F27</sup>or 47A], Chapter 2 of Part 4 of FA 1996 (loan relationships) has effect in relation to the arrangements as if—
  - (a) the arrangements were a loan relationship to which the company is a party,
  - (b) [<sup>F28</sup>in the case of arrangements within section 47,] any amount which is the purchase price for the purposes of section 47(1)(b) were the amount of a loan made (as the case requires) to the company by, or by the company to, the other party to the arrangements, and
- [<sup>F29</sup>(ba) in the case of arrangements within section 47A, the consideration paid by the financial institution for the acquisition of its beneficial interest were the

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- amount of a loan made (as the case requires) to the company by, or by the company to, the other party to the arrangements,]
- (c) alternative finance return payable to or by the company under the arrangements were interest payable under that loan relationship.
- (2) Where a company is a party to arrangements falling within section 49, Chapter 2 of Part 4 of FA 1996 (loan relationships) has effect in relation to the arrangements as if—
- (a) the arrangements were a loan relationship to which the company is a party,
- (b) any amount deposited under the arrangements were—
- (i) in relation to a company which is the depositor under the arrangements, the amount of a loan made by the company to the financial institution, and
- (ii) in relation to a company which is the financial institution with which the depositor deposits money under the arrangements, the amount of a loan made to it by the depositor, and
- (c) profit share return payable to or by the company under the arrangements were interest payable under that loan relationship.
- [<sup>F30</sup>(2A) Where a company is a party to arrangements falling within section 49A, Chapter 2 of Part 4 of FA 1996 (loan relationships) has effect in relation to the arrangements as if—
- (a) the arrangements were a loan relationship to which the company is a party,
- (b) the amount provided under the arrangements were—
- (i) in relation to a company which is the principal under the arrangements, the amount of a loan made by the company to the agent, and
- (ii) in relation to a company which is the agent under the arrangements, the amount of a loan made to it by the principal, and
- (c) profit share return payable to or by the company under the arrangements were interest payable under that loan relationship.]
- (3) Accordingly, references in the Corporation Tax Acts to a loan relationship include references to alternative finance arrangements.
- (4) In subsection (2)(b), “depositor” is to be read in accordance with section 49(1)(a).

#### Textual Amendments

- F27** Words in s. 50(1) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(4\)\(a\)](#)
- F28** Words in s. 50(1)(b) added (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(4\)\(b\)](#)
- F29** S. 50(1)(ba) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(4\)\(c\)](#)
- F30** S. 50(2A) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(4\)](#)

## 51 Treatment of alternative finance arrangements: persons other than companies

- (1) Alternative finance return or profit share return is to be treated for the purposes of ITTOIA 2005 as if it were interest.
- (2) Sections 353 to 368 of ICTA (relief for payments of interest) have effect as if—

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- (a) arrangements falling within section 47 involved the making of a loan, and
  - (b) alternative finance return were interest;
- and section 366 (information) shall have effect accordingly.
- (3) Subsections (4) and (5) apply to the extent that a person other than a company is a party to alternative finance arrangements for the purposes of a trade, profession or vocation carried on by him or for the purposes of a property business of his.
- (4) Alternative finance return or profit share return paid by him is to be treated as an expense of the trade, profession or vocation or of the property business.
- (5) Section 58 of ITTOIA 2005 (incidental costs of obtaining finance) has effect as if—
- (a) references to a loan included references to alternative finance arrangements, and
  - (b) references to interest included references to alternative finance return or profit share return.

## **52 Provision not at arm's length**

- (1) This section applies where—
- (a) arrangements would apart from this section fall within section 47 <sup>[F31]</sup>, 47A <sup>[F32]</sup>, 49 or 49A,]
  - (b) paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) requires the profits and losses of any person who is a party to the arrangements to be computed for tax purposes as if the arm's length provision referred to in paragraph 1(2)(a) of that Schedule had been made or imposed instead of the arrangements, and
  - (c) any person who is for the purposes of that Schedule an affected person is entitled to—
    - (i) relevant return, or
    - (ii) an amount representing relevant return,
 but is not subject to income tax or corporation tax, or any corresponding tax under the law of a territory outside the United Kingdom, on the relevant return or the amount representing it.
- (2) In this section “relevant return”, in relation to any arrangements, means any amount that would be alternative finance return or profit share return if the arrangements were alternative finance arrangements.
- (3) The arrangements are not to be regarded as falling within section 47 <sup>[F33]</sup>, 47A <sup>[F34]</sup>, 49 or 49A.]
- (4) Where the arrangements would, but for subsection (3), fall within section <sup>[F35]</sup>47 or 47A,] the person paying relevant return under the arrangements is not entitled—
- (a) to any deduction in computing profits or gains for the purposes of income tax or corporation tax, or
  - (b) to any deduction against total income or, as the case may be, total profits, in respect of the relevant return.
- (5) Where the arrangements would, but for subsection (3), fall within section <sup>[F36]</sup>49 or 49A,] the person paying relevant return under the arrangements is not entitled—



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- (a) to any deduction in computing profits or gains for the purposes of income tax or corporation tax, or
  - (b) to any deduction against total income or, as the case may be, total profits, in respect of the relevant return.
- (6) Where the person paying relevant return under the arrangements is a company, an amount may not be surrendered by way of group relief if a deduction in respect of it is prohibited by subsection (4) or (5).

#### Textual Amendments

- F31** Words in s. 52(1)(a) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(5\)\(a\)](#)
- F32** Words in s. 52(1)(a) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(a\)](#)
- F33** Words in s. 52(3) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(5\)\(b\)](#)
- F34** Words in s. 52(3) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(b\)](#)
- F35** Words in s. 52(4) substituted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(5\)\(c\)](#)
- F36** Words in s. 52(5) substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(5\)\(c\)](#)

### 53 Treatment of section 47 [<sup>F37</sup>or 47A] arrangements: sale and purchase of asset

- (1) Where under arrangements falling within section 47 [<sup>F38</sup>or 47A] an asset is sold by one party to the arrangements to the other party, the effective return shall be excluded in determining for the purposes of the Tax Acts (apart from that section) and of TCGA 1992 the consideration for the sale and purchase of the asset.
- (2) Subsection (1) does not affect the operation of any provision of the Tax Acts or TCGA 1992 which provides that the consideration for a sale or purchase is to be taken for any purpose to be an amount other than the actual consideration.
- [<sup>F39</sup>(3) In the application of this section to section 47A a reference to the effective return is a reference to the alternative finance return.]

#### Textual Amendments

- F37** Words in s. 53 heading inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(6\)\(c\)](#)
- F38** Words in s. 53(1) inserted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(6\)\(a\)](#)
- F39** S. 53(3) added (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(6\)\(b\)](#)

### 54 [<sup>F40</sup>Sections 49 and 49A] arrangements: profit share return not to be treated as distribution

Profit share return is not to be treated by virtue of section 209(2)(e)(iii) of ICTA as being a distribution for the purposes of the Corporation Tax Acts.

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### Textual Amendments

**F40** Words in s. 54 heading substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(6\)](#)

## *Supplementary*

### 55 Further provisions

Schedule 2 (which contains further provision about the treatment of alternative finance arrangements for the purposes of income tax, corporation tax and capital gains tax) has effect.

### 56 Application of Chapter

- (1) This Chapter has effect in relation to alternative finance arrangements entered into on or after 6th April 2005.
- (2) To the extent provided by subsections (3) to (6), this Chapter also has effect in relation to alternative finance arrangements falling within section 49 entered into before 6th April 2005 under which profit share return is payable on or after that date (“existing profit share arrangements”).
- (3) For the purposes of income tax, this Chapter has effect in relation to payments of profit share return made on or after 6th April 2005 under existing profit share arrangements to a person other than a company.
- (4) Where a company is a party to existing profit share arrangements—
  - (a) this Chapter has effect in relation to the company in relation to those arrangements with effect from 6th April 2005, and
  - (b) for the purposes of Chapter 2 of Part 4 of FA 1996, the loan which is treated by section 50 as made by or to the company is a loan made on 6th April 2005 of an amount equal to the notional carrying value of the asset or liability representing the existing profit share arrangements.
- (5) For the purposes of subsection (4)(b) the notional carrying value is the amount which would have been the carrying value of the asset or liability in the accounts of the company (prepared in accordance with generally accepted accounting practice) if a period of accounts had ended immediately before 6th April 2005.
- (6) Section 54 has effect in relation to profit share return paid by a company on or after 6th April 2005 under existing profit share arrangements.

### Modifications etc. (not altering text)

**C1** S. 56 modified (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(11\)](#)

### 57 Interpretation of Chapter

In this Chapter—

“alternative finance arrangements” has the meaning given by section 46(1);

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“alternative finance return” has the meaning given by [<sup>F41</sup>sections 47(6) and (7) and 47A(5)];

“financial institution” has the meaning given by section 46(2);

“profit share return” has the meaning given by [<sup>F42</sup>sections 49(2) and 49A(2)];

“property business” has the meaning given by section 263(6) of ITTOIA 2005.

#### Textual Amendments

**F41** Words in s. 57 substituted (with effect in accordance with s. 96(8) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 96\(7\)](#)

**F42** Words in s. 57 substituted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 95\(7\)](#)

## CHAPTER 6

### FILM RELIEF

#### *Tax relief for limited-budget films*

#### <sup>F43</sup>**58 Relief for production and acquisition expenditure on limited-budget films**

.....

#### Textual Amendments

**F43** [Ss. 58-71](#) repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 26 Pt. 3\(4\)](#)

#### *Restrictions on relief*

#### <sup>F43</sup>**59 Restrictions on relief for production and acquisition expenditure**

.....

#### Textual Amendments

**F43** [Ss. 58-71](#) repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 26 Pt. 3\(4\)](#)

#### *Deferred income agreements*

#### <sup>F43</sup>**60 Deferred income agreements which exist when relief claimed**

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

#### Textual Amendments

- F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 61 Meaning of “deferred income agreement in respect of a film”

.....

#### Textual Amendments

- F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 62 Deferred income agreements entered into after relief claimed

.....

#### Textual Amendments

- F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 63 Sections 60 to 62: supplementary

.....

#### Textual Amendments

- F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 64 Transitional provision for years of assessment before the year 2005-06

.....

#### Textual Amendments

- F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 65 Corresponding provision in ITTOIA 2005

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### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

## Companies benefited by film relief: exit charges

### <sup>F43</sup> 66 When a chargeable event occurs

.....

### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 67 Consequences of a chargeable event: exit event X or Y

.....

### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 68 Exit event Z: a relevant disposal at an undervalue

.....

### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 69 Consequences of a chargeable event: exit event Z

.....

### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup> 70 Valuation of the “rights to guaranteed income” and “disposed rights”

.....

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#### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

### <sup>F43</sup>71 Meaning of “company” and related terms

.....

#### Textual Amendments

**F43** Ss. 58-71 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(4)**

## CHAPTER 7

### AVOIDANCE INVOLVING PARTNERSHIP

#### *Partners: restrictions on relief*

### 72 Removal of restrictions on interest relief

(1) In section 117 of ICTA (restriction on interest relief and loss relief for limited partners)

- - (a) in subsection (1)—
    - (i) omit “353,” and
    - (ii) in paragraph (a) omit “, or of interest paid by him in connection with the carrying on of a trade,”
  - (b) in subsection (2), in the definition of “the aggregate amount”—
    - (i) omit “353,” and
    - (ii) in paragraph (a) omit “, or of interest paid by him in connection with carrying it on,” and
  - (c) in that subsection, in the definition of “the appropriate time” omit “or the interest paid”.

(2) In section 118ZB of that Act (limited liability partnerships: restriction on relief), in subsection (2) omit “, or interest paid by him in connection with the carrying on of a trade,”.

(3) In section 118ZE of that Act (restriction on relief for non-active partners), in subsection (1) omit “353,” and “, or interest paid by him in connection with the carrying on of a trade,”.

(4) In section 118ZF of that Act (meaning of “the aggregate amount”), in subsection (1) omit “353,” and “, or of interest paid by him in connection with carrying it on,”.

(5) In section 118ZG of that Act (meaning of “the individual's contribution to the trade”), in subsection (2)(b)(ii) omit “353,” and “, or of interest paid by him in connection with carrying it on,”.

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- (6) In section 118ZJ of that Act (commencement: the first restricted year)—
- (a) in subsection (3) omit “353,” and “, and interest paid by him in connection with carrying it on,”,
  - (b) in subsection (4)—
    - (i) omit “the sum of”, and
    - (ii) omit paragraph (b) and the word “and” immediately before it, and
  - (c) in subsection (5) omit paragraph (b) and the word “and” immediately before it.
- (7) The amendments made by this section have effect in relation to the application of section 117 of ICTA (including that section as applied by section 118ZB of that Act) and section 118ZE of that Act in relation to—
- (a) any loss sustained by an individual in a trade, or interest paid by him in connection with the carrying on of a trade, in a year of assessment the basis period for which begins on or after 2nd December 2004, and
  - (b) any post-announcement loss sustained by an individual in a trade, and any post-announcement interest paid by him in connection with the carrying on of a trade, in a straddling year of assessment.
- (8) For the purposes of this section—
- “basis period” means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;
- “post-announcement loss”, in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the trade in the period which—
- (a) begins with 2nd December 2004, and
  - (b) ends with the end of the basis period for that straddling year of assessment;
- “post-announcement interest”, in relation to a straddling year of assessment, means any interest paid by the individual, in connection with carrying on the trade, in the period which—
- (a) begins with 2nd December 2004, and
  - (b) ends with the end of the basis period for that straddling year of assessment;
- “straddling year of assessment” means a year of assessment the basis period for which begins before and includes 2nd December 2004.
- (9) In the definition of “post-announcement loss” in subsection (8), the reference to the loss sustained by the individual in the trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—
- (a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and
  - (b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.
- (10) In subsection (9) the references to “the partnership” are to the partnership as a member of which the individual carries on the trade.

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- (11) In relation to years of assessment which are before the year 2005-06, subsections (7) to (9) have effect as if—
- (a) in subsection (8) for the definition of “basis period” there were substituted—
 

““basis period” means the basis period given by sections 60 to 63 of ICTA as applied by section 111(4) and (5) of that Act, except that the basis period for a year of assessment to which section 61(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;”, and
  - (b) the reference in subsection (9)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of ICTA.
- (12) The amendments made by this section are deemed to have come into force on 2nd December 2004.

### **73      Meaning of “contribution to the trade”**

- (1) After section 118ZM of ICTA insert—

*“Partners: meaning of “contribution to the trade”*

#### **118ZN Partners: meaning of “contribution to the trade”**

- (1) This section applies for the purposes of the application of any of the following provisions (“the relevant provisions”)—
- (a) section 117 (restriction on relief for limited partners),
  - (b) that section as applied by section 118ZB in relation to a member of a limited liability partnership, and
  - (c) section 118ZE (restriction on relief for non-active partners),
- to an amount which may be given to an individual under section 380 or 381 in respect of a relevant loss sustained by him in a trade (“the relevant trade”).
- (2) The Board may by regulations provide that, for those purposes, any amount of a description specified in the regulations is to be excluded when computing the amount of the individual's contribution to the relevant trade at any time for the purposes of the relevant provisions.
- (3) Regulations under this section may—
- (a) make provision having effect before the date on which the regulations are made,
  - (b) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be necessary or expedient, and
  - (c) make different provision for different cases or different purposes.
- (4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the passing of the Finance Act 2005.
- (5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.



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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

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### 118ZO Meaning of “relevant loss” in section 118ZN

- (1) For the purposes of section 118ZN a “relevant loss” means—
  - (a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or
  - (b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.
- (2) For the purposes of this section—

“basis period” means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;

“post-announcement loss”, in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—

  - (a) begins with 2nd December 2004, and
  - (b) ends with the end of the basis period for that straddling year of assessment;

“straddling year of assessment” means a year of assessment the basis period for which begins before and includes 2nd December 2004.
- (3) In the definition of “post-announcement loss” in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—
  - (a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and
  - (b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.
- (4) In subsection (3) the references to “the partnership” are to the partnership as a member of which the individual carries on the relevant trade.
- (5) In relation to years of assessment which are before the year 2005-06, this section has effect as if—
  - (a) in subsection (2) for the definition of “basis period” there were substituted—

““basis period” means the basis period given by sections 60 to 63 as applied by section 111(4) and (5), except that the basis period for a year of assessment to which section 61(1) applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;”, and

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- (b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of this Act.”
- (2) In section 117 of ICTA (restriction on relief for limited partners) at the end add—
  - “(5) This section is subject to provision made by regulations under section 118ZN (partners: meaning of “contribution to the trade”).”
- (3) In section 118ZC of ICTA (meaning of the contribution to the trade of a member of a limited liability partnership) at the end add—
  - “(5) This section is subject to provision made by regulations under section 118ZN (partners: meaning of “contribution to the trade”).”
- (4) In section 118ZG of ICTA (meaning of a non-active partner's contribution to the trade) at the end add—
  - “(7) This section is subject to provision made by regulations under section 118ZN (partners: meaning of “contribution to the trade”).”
- (5) The amendments made by this section are deemed to have come into force on 2nd December 2004.

*Partners: recovery of excess relief*

## **74 Recovery of excess relief given under section 380 or 381 of ICTA**

- (1) This section applies where—
  - (a) an individual makes one or more claims for relief under section 380 or 381 of ICTA at any time in respect of any relevant losses sustained by him in a trade (“the relevant trade”),
  - (b) the whole or part of that relief has been claimed against income other than income consisting of profits arising from the relevant trade,
  - (c) the amount of the relief which could be given against such income was determined in accordance with one or more of the restriction provisions (whether or not any of those provisions prevented any amount of relief being given), and
  - (d) at any time after the claim or claims mentioned in paragraph (a) has or have been made, a chargeable event occurs in relation to the individual.
- (2) The “restriction provisions” are—
  - (a) section 117 of ICTA (restriction on relief for limited partners),
  - (b) that section as applied by section 118ZB of ICTA in relation to a member of a limited liability partnership, and
  - (c) section 118ZE of ICTA (restriction on relief for non-active partners).
- (3) A “chargeable event” occurs in relation to an individual at any time when a relevant decrease in the individual's contribution to the relevant trade occurs which immediately results in—
  - (a) the total losses claimed (less any reclaimed relief) becoming greater than the individual's contribution to the relevant trade, or
  - (b) an increase in the amount (if any) by which the total losses claimed (less any reclaimed relief) exceeds the individual's contribution to the relevant trade.

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- (4) Where a chargeable event occurs in relation to an individual—
- (a) the individual is to be treated as receiving at the time of the occurrence of the chargeable event an amount of income equal to the chargeable amount,
  - (b) that income is not to be treated as profits of the relevant trade and is to be chargeable to income tax for the year of assessment in which the chargeable event occurs, and
  - (c) the individual is to be liable for any tax so chargeable.
- (5) The “total losses claimed” means the total amount of any losses sustained by the individual in the relevant trade in any eligible year of assessment to the extent that they are losses—
- (a) in respect of which the individual has at any time claimed relief under section 380 or 381 of ICTA, or
  - (b) that he has at any time claimed as allowable losses under section 72 of FA 1991.
- (6) “Reclaimed relief” means the total of the amounts which the individual has been treated as receiving under subsection (4) as a result of the occurrence of any previous chargeable event in relation to the individual in respect of the relevant trade.
- (7) The “individual's contribution to the relevant trade” at any time means the amount of the individual's contribution to that trade at that time within the meaning given for the purposes of the relevant restriction provision and computed at that time in accordance with that provision.
- (8) The “relevant restriction provision” means—
- (a) the restriction provision which applied as mentioned in subsection (1)(c), or
  - (b) where more than one restriction provision so applied, the restriction provision which so applied to the amount of relief which could be given in respect of the relevant loss which was most recently sustained by the individual in the relevant trade.
- (9) A “relevant decrease in the individual's contribution to the relevant trade” occurs when the amount of that contribution becomes, as a result of the application of any regulations made under section 118ZN of ICTA (partners: meaning of “contribution to the trade”), less than the amount it would otherwise be apart from the application of those regulations.
- (10) The “amount of the relevant decrease in the individual's contribution to the relevant trade” is the difference between those two amounts.
- (11) An “eligible year of assessment” is—
- (a) a year of assessment at any time during which the individual carried on the relevant trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2) of ICTA, or
  - (b) a qualifying year of assessment within the meaning of section 118ZE of that Act.
- (12) In sections 75 to 77 references to expressions which are defined in this section are to be construed in accordance with this section.
- (13) This section is deemed to have come into force on 2nd December 2004.

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## **75 Computing the chargeable amount**

- (1) For the purposes of section 74, the “chargeable amount” is determined by taking whichever is the smallest of amounts A, B and C.
- (2) Amount A is the amount of the relevant decrease in the individual's contribution to the relevant trade which constitutes the chargeable event.
- (3) Amount B is the amount given by—
  - (a) taking, at the time immediately after the occurrence of the chargeable event, the amount of the total losses claimed which are relevant losses, and
  - (b) reducing that amount (but not below nil) by any reclaimed relief at that time.
- (4) Amount C is the amount given by—
  - (a) taking the amount by which, at the time immediately after the occurrence of the chargeable event, the total losses claimed exceed the individual's contribution to the relevant trade, and
  - (b) reducing that amount (but not below nil) by any reclaimed relief at that time.
- (5) This section is deemed to have come into force on 2nd December 2004.

## **76 Meaning of “relevant loss”**

- (1) For the purposes of sections 74 and 75 a “relevant loss” means—
  - (a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or
  - (b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.
- (2) For the purposes of this section—
 

“basis period” means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;

“post-announcement loss”, in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—

  - (a) begins with 2nd December 2004, and
  - (b) ends with the end of the basis period for that straddling year of assessment;

“straddling year of assessment” means a year of assessment the basis period for which begins before and includes 2nd December 2004.
- (3) In the definition of “post-announcement loss” in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—
  - (a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and
  - (b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.

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(4) In subsection (3) the references to “the partnership” are to the partnership as a member of which the individual carries on the relevant trade.

(5) This section is deemed to have come into force on 2nd December 2004.

## **77 Transitional provision for years of assessment before the year 2005-06**

(1) This section applies in relation to years of assessment which are before the year 2005-06.

(2) Subsection (4) of section 74 has effect as if for “individual—” to the end there were substituted “ individual, the individual is to be treated as receiving at the time of the occurrence of the chargeable event annual profits or gains which are of an amount equal to the chargeable amount and are chargeable to income tax under Case VI of Schedule D. ”.

(3) Section 76 has effect as if—

(a) in subsection (2) for the definition of “basis period” there were substituted—

““basis period” means the basis period given by sections 60 to 63 of ICTA as applied by section 111(4) and (5) of that Act, except that the basis period for a year of assessment to which section 61(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;”, and

(b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of ICTA.

(4) This section is deemed to have come into force on 2nd December 2004.

## **78 Consequential amendments**

(1) In section 117(2) of ICTA (restriction on relief for limited partners)—

(a) at the end of the definition of “the aggregate amount” insert— “ less the amount of any reclaimed relief at that time; ”, and

(b) after that definition insert—

““the amount of any reclaimed relief” at any time means the total of any amounts at that time which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade;”.

(2) In section 118ZF of ICTA (meaning of “the aggregate amount”)—

(a) in subsection (1), after “subsection (2)” insert “ , less the amount of any reclaimed relief. ”, and

(b) after that subsection insert—

“(1A) For the purposes of subsection (1) “the amount of any reclaimed relief” means the total of any amounts which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade.”

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- (3) In section 121 of FA 2004 (definition of “the losses claimed”)—
- (a) at the end of subsection (1) insert— “ less the amount of any relevant reclaimed relief. ”, and
  - (b) after that subsection insert—
 

“(1A) The “amount of any relevant reclaimed relief” means whichever is the lesser of—

    - (a) the total of any amounts which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381 of the Taxes Act 1988) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade, and
    - (b) the total amount of any film-related losses sustained by the individual in the trade in any eligible years of assessment within the meaning of section 74 of the Finance Act 2005 to the extent that they are losses in respect of which he has at any time claimed relief as described in paragraph (a) or (b) of subsection (1) above.”
- (4) The amendments made by this section are deemed to have come into force on 2nd December 2004.

#### *Partners benefited by film relief*

### **79      Meaning of “capital contribution to the trade”**

- (1) After section 122 of FA 2004 insert—

#### **“122A Partners: meaning of “capital contribution to the trade”**

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

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- (c) make different provision for different cases or different purposes.
- (4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the Finance Act 2005.
- (5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.”
- (2) In section 121 of FA 2004 (definition of “the individual's capital contribution to the trade”) at the end insert—
  - “(7) This section is subject to provision made by regulations under section 122A (partners: meaning of “capital contribution to the trade”).”
- (3) In section 123(1) of FA 2004 (definition of “film-related losses”) for “and 121” substitute “, 121 and 122A ”.
- (4) The amendments made by this section are deemed to have come into force on 2nd December 2004.

## CHAPTER 8

### ACCOUNTING PRACTICE AND RELATED MATTERS

#### **80 Accounting practice and related matters**

- (1) Schedule 4 (accounting practice and related matters) has effect.
- (2) In that Schedule—
  - Part 1 makes provision about bad debts and related matters;
  - Part 2 makes other provision connected with accounting practice.
- (3) Part 1 of the Schedule, so far as it amends provisions that have effect both for income tax and corporation tax, has effect for the purposes of corporation tax only.
- (4) Except as otherwise provided, the provisions of the Schedule have effect for periods of account beginning on or after 1st January 2005.

#### **81 Computation of profits: change of accounting basis**

- (1) In section 64 of FA 2002 (computation of profits: adjustment on change of basis), for subsection (3) (meaning of “relevant change of accounting approach”) substitute—
  - “(3) A “relevant change of accounting approach” means—
    - (a) a change of accounting principle or practice that, in accordance with generally accepted accounting practice, gives rise to a prior period adjustment, or
    - (b) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts drawn up in accordance with international accounting standards.”.

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- (2) In paragraphs 4(3) and 5(2) of Schedule 22 to FA 2002 (adjustments treated as arising on the last day of the first period of account for which the new basis is adopted), for “last day” substitute “ first day ”.
- (3) The amendments in this section have effect for periods of account beginning on or after 1st January 2005.

## **82 Change of accounting practice: deferment of transitional adjustments**

- (1) This section applies where—
  - (a) a company enters into a transaction on or after 14th December 2004, otherwise than in the ordinary course of its business,
  - (b) as a result of the transaction it incurs a loss in respect of a loan relationship or derivative contract in respect of which, apart from this section, a debit would fall to be brought into account for tax purposes in a period of account beginning before 1st January 2005,
  - (c) the sole or main purpose of the company in entering into the transaction at the time it did was to enable it to bring a debit into account for tax purposes in such a period, and
  - (d) if the company had continued to hold the asset or liability representing the loan relationship or derivative contract, as it was held immediately before the transaction referred to in paragraph (a), in its first period of account beginning on or after 1st January 2005, a debit would have arisen in respect of the loan relationship or derivative contract in that period that was a prescribed debit for the purposes of regulation 3 of the Loan Relationship and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271) (debts not to be brought into account until the company's first period beginning on or after 1st January 2006).
- (2) Where this section applies no such debit as is mentioned in subsection (1)(b) shall be brought into account in the period of account mentioned there, but a debit of the same amount shall instead be brought into account as if it were a prescribed debit for the purposes of the regulation referred to in subsection (1)(d) (even though the loss giving rise to the debit was incurred before 1st January 2005).
- (3) In determining the sole or main purpose of a company for the purposes of subsection (1)(c) regard shall be had to anything done by a connected company that would be relevant for the purposes of that determination if done by the company in question.  
  
 For this purpose companies are connected if they are connected persons within the meaning of section 839 of ICTA.
- (4) For the purposes of subsection (1)(d) it shall be assumed that the loan relationship or derivative contract has the same value at the beginning of the company's first period of account beginning on or after 1st January 2005 as it had at the time of the transaction referred to in subsection (1)(a).
- (5) This section does not apply where the transaction is entered into in pursuance of legally binding arrangements entered into before 14th December 2004.
- (6) In this section, references to a company entering into a transaction include a reference to the company, or the directors of the company, taking a decision about a loan relationship or derivative contract that affects its treatment for accounting purposes



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(other than a decision to prepare some or all of the company's accounts in accordance with international accounting standards).

### 83 Application of accounting standards to securitisation companies

- (1) For the purposes of the Corporation Tax Acts as they apply to a securitisation company in relation to a period of account—

- (a) beginning on or after 1st January 2005, and
- (b) ending before [<sup>F44</sup>1st January 2008],

generally accepted accounting practice shall be taken to be UK generally accepted accounting practice as it applied for a period of account ending on 31st December 2004.

- (2) For the purposes of this section a “securitisation company” means a company that is—

- (a) a note-issuing company,
- (b) an asset-holding company,
- (c) an intermediate borrowing company,
- (d) a warehouse company, or
- (e) a commercial paper funded company,

as defined below.

- (3) A “note-issuing company” means a company in relation to which the following conditions are met—

- (a) it is party as debtor to a capital market investment,
- (b) the securities that represent the capital market investment are issued wholly or mainly to independent persons,
- (c) the capital market investment is part of a capital market arrangement, <sup>F45</sup> . . .
- (d) the total value of the capital market investments made under that capital market arrangement is at least £50 million [<sup>F46</sup>, and
- (e) if it has any business apart from the activity mentioned in paragraph (a) (and any incidental activities) it consists in one or both of the following—
  - (i) acquiring, holding and managing assets forming the whole or part of the security for the capital market arrangement;
  - (ii) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company's rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.]

- (4) An “asset-holding company” means a company—

- (a) whose business (apart from any incidental activities) consists in acquiring, holding and managing assets forming the whole or part of the security for a capital market arrangement entered into by a note-issuing company, and
- (b) whose liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or intermediate borrowing company.

- (5) An “intermediate borrowing company” means a company—

- (a) whose only business is to enter into and be a party to creditor relationships with an asset-holding company [<sup>F47</sup>(or another intermediate borrowing company)], and

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- (b) whose liabilities representing debtor relationships are owed wholly, or substantially wholly, to a note-issuing company [<sup>F48</sup>(or another intermediate borrowing company)].
- (6) A “warehouse company” means a company whose business consists wholly of acquiring and holding financial assets for the purpose—
  - (a) of transferring them to a company (whether or not yet in existence) that at the time of the transfer is, or as a result of the transfer will become, an asset-holding or note-issuing company, or
  - (b) of itself becoming an asset-holding or note-issuing company.
- (7) A “commercial paper funded company” means—
  - (a) a company that was an asset-holding company but whose obligations under debtor relationships to a note-issuing company or intermediate borrowing company—
    - (i) have been transferred to, or
    - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking, or
  - (b) a company that was an intermediate borrowing company but whose obligations under debtor relationships to a note-issuing company—
    - (i) have been transferred to, or
    - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking.
- (8) In this section—
  - “asset” includes any option, future or contract for differences as defined for the purposes of Schedule 26 to FA 2002 (derivative contracts) (see paragraph 12 of that Schedule);
  - “capital market investment” and “capital market arrangement” have the same meaning as in section 72B(1) of the Insolvency Act 1986 (c. 45) (see paragraphs 1, 2 and 3 of Schedule 2A to that Act);
  - “company” includes a partnership;
  - “financial asset” has the meaning it has for accounting purposes; and
  - “independent persons” means persons who are not connected with the company.
- (9) Section 839 of ICTA (connected persons) applies for the purposes of the definition above of “independent persons”, except that in applying the definition of “control” in that section a person is not to be treated as a participator in a company by reason only that he is a loan creditor of the company.

#### Textual Amendments

- F44** Words in s. 83(1)(b) substituted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(2\)\(6\)](#) (with s. 101(7)-(8))
- F45** Word in s. 83(3)(c) repealed (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(3\)\(a\)\(6\)](#), [Sch. 26 Pt. 3\(19\)](#) (with s. 101(7)-(8))
- F46** S. 83(3)(e) and word inserted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(3\)\(b\)\(6\)](#) (with s. 101(7)-(8))
- F47** Words in s. 83(5)(a) inserted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(4\)\(a\)\(6\)](#) (with s. 101(7)-(8))

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**F48** Words in s. 83(5)(b) inserted (retrospectively) by [Finance Act 2006 \(c. 25\)](#), s. **101(4)(b)(6)** (with s. **101(7)-(8)**)

## 84 Taxation of securitisation companies

- (1) The Treasury may make provision by regulations as to the application of the Corporation Tax Acts in relation to a securitisation company.
- (2) For the purposes of this section a “securitisation company” means a company—
  - (a) in relation to which the following conditions are met—
    - (i) it is party as debtor to a capital market investment,
    - (ii) securities representing that capital market investment are issued, and
    - (iii) the capital market investment is part of a capital market arrangement, and which meets such other conditions as may be specified; or
  - (b) of a description specified by reference to its relationship, direct or indirect, with a company within paragraph (a).
- (3) The regulations may, in particular—
  - (a) provide for the application, modification or non-application of any of the provisions of the Corporation Tax Acts;
  - (b) provide—
    - (i) that the amount of profits of any specified description (before any such adjustments as are mentioned in paragraph (c)) is to be taken to be such amount, or is to be calculated on such basis, as may be specified, and
    - (ii) that that amount is to be brought into account for corporation tax purposes instead of any specified amount that would otherwise fall to be brought into account;
  - (c) provide for specified adjustments to be made to the amount to be brought into account for corporation tax purposes;
  - (d) provide—
    - (i) that the regulations apply to a company only if an election to that effect is made, <sup>F49</sup>and]
    - <sup>F50</sup>(ii) .....
    - (iii) that once subject to the regulations a company shall continue to be so for all subsequent periods of account;
  - (e) impose conditions that must be met if a company is to have, or continue to have, the benefit of the regulations; and
  - (f) provide for the consequences of failing to meet any specified condition (which may include recalculating, on the basis that the regulations did not apply, the company's profits for previous periods).
- (4) The regulations may make different provision for different descriptions of company.
- (5) Regulations under this section may—
  - <sup>F51</sup>(a) .....
  - (b) in any case, make provision having effect from the beginning of periods of account current when the regulations are made.
- (6) In this section—

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“capital market investment” and “capital market arrangement” have the same meaning as in section 72B(1) of the Insolvency Act 1986 (c. 45) (see paragraphs 1, 2 and 3 of Schedule 2A to that Act); and

“specified” means specified in regulations under this section.

- (7) The first regulations under this section shall not be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons.

#### Textual Amendments

- F49** Word in s. 84(3)(d)(i) inserted (retrospectively) by [Finance Act 2006 \(c. 25\)](#), [s. 101\(5\)\(a\)\(i\)\(6\)](#) (with [s. 101\(7\)-\(8\)](#))
- F50** S. 84(3)(d)(ii) and word repealed (retrospectively) by [Finance Act 2006 \(c. 25\)](#), [s. 101\(5\)\(a\)\(ii\)\(6\)](#), [Sch. 26 Pt. 3\(19\)](#) (with [s. 101\(7\)-\(8\)](#))
- F51** S. 84(5)(a) repealed (retrospectively) by [Finance Act 2006 \(c. 25\)](#), [s. 101\(5\)\(b\)\(6\)](#), [Sch. 26 Pt. 3\(19\)](#) (with [s. 101\(7\)-\(8\)](#))

## CHAPTER 9

### INTERNATIONAL MATTERS

#### *Double taxation relief: general*

#### **85 Dividends by reference to which a deduction is allowed: no underlying tax**

- (1) In section 799 of ICTA (computation of underlying tax) after subsection (2) insert—
- “(2A) No underlying tax shall be taken into account under subsection (1) above in the case of a dividend if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of that territory in respect of an amount determined by reference to the dividend.”.
- (2) The amendment made by this section has effect in relation to dividends paid on or after 16th March 2005.

#### *Double taxation relief: restrictions*

#### **86 Limits on credit: income tax and corporation tax: trading profits**

- (1) For sections 798 to 798B of ICTA (double taxation relief: foreign interest and dividends) substitute—

##### **“798 Section 796: trade income**

- (1) This section has effect in relation to the application of section 796(1) to the allowance of credit for foreign tax against income tax in respect of trade income.

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- (2) In making the computations required by section 796(1)(a) and (b) there shall be deducted from the amount of the income in respect of which the credit is to be allowed deductions, charges or expenses which would be allowable in a computation of the taxpayer's liability in respect of that income.
- (3) The reference in subsection (2) to allowable deductions, charges or expenses includes a reference to a reasonable apportionment of allowable deductions or expenses which relate partly to the income and partly to other matters.
- (4) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 796(1)—
  - (a) royalty income arising in different jurisdictions (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as a single item of income, and
  - (b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.
- (5) In this section “trade income” means income chargeable to tax under—
  - (a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts),
  - (b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts), or
  - (c) Chapter 11 of Part 3 of ITTOIA 2005 (overseas property income).

#### **798A Section 797: trade income**

- (1) This section has effect in relation to the application of section 797(1) to the allowance of credit for foreign tax against corporation tax in respect of trade income.
- (2) The reference in section 797(1) to the relevant income or gain shall be treated as referring only to income arising or gains accruing out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.
- (3) In determining for the purposes of section 797(1) the amount of corporation tax attributable to any income or gain, there shall be taken into account—
  - (a) deductions or expenses which would be allowable in the computation of the taxpayer's liability,
  - (b) a reasonable apportionment of allowable deductions or expenses which relate partly to the transaction, arrangement or asset from which the income or gain arises and partly to other matters, and
  - (c) expenses of a company connected (within the meaning given by section 839) with the taxpayer, in so far as reasonably attributable to the income or gain.
- (4) In this section and section 798B “trade income” means—
  - (a) income or profits chargeable to tax under Case I, II or V of Schedule D,
  - (b) profits of a Schedule A business computed in same way as the profits of a trade in accordance with section 21A of ICTA,

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- (c) sums charged to tax under Case VI of Schedule D in accordance with section 104 of ICTA, and
- (d) any other income or profits which by a provision of ICTA is chargeable to tax under, or computed in accordance with, Case I of Schedule D;

but this section shall not apply in relation to income to which section 804C below applies.

### **798B Section 798A: special cases**

- (1) Where—
  - (a) a credit for foreign tax arises in connection with an asset, and
  - (b) the asset is in a hedging relationship with a derivative contract,
 in the application of section 798A(2) the reference to the income arising out of the asset shall be taken as a reference to the income arising out of the asset and the derivative contract taken together (but taking account of the income or loss from the derivative contract only in so far as reasonably attributable to the hedging relationship).
- (2) For the purposes of subsection (1)(b) an asset is in a hedging relationship with a derivative contract if—
  - (a) the asset is acquired as a hedge of risk in connection with the contract, or
  - (b) the contract is entered into as a hedge of risk in connection with the asset;
 and if an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that shall be conclusive for the purpose of this subsection.
- (3) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 798A(2)—
  - (a) royalty income arising in more than one jurisdiction (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as income arising from a single transaction, arrangement or asset, and
  - (b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.
- (4) If a person (“A”) carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person (“B”) a main purpose of which is to alter the effect of section 798A in relation to A, income received in pursuance of the scheme or arrangement shall be treated for the purposes of section 798A as trade income of B (and not as income of A).
- (5) Where—
  - (a) transactions, arrangements or assets are treated by a taxpayer as a series or group (the “portfolio”),
  - (b) a number of credits for foreign tax arise in respect of the portfolio, and
  - (c) either—

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- (i) it is not reasonably practicable to prepare a separate computation of income or gain for the purposes of section 798A(2) in respect of each transaction, arrangement or asset, or
- (ii) a separate computation of income or gain in respect of each transaction, arrangement or asset for the purposes of section 798A(2) would not, compared with an aggregated computation, make a material difference to the amount of credit for foreign tax which is allowable,

the income or gains arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 798A(2) in a fair and reasonable manner.

### **798C Disallowed credit: use as deduction**

- (1) This section applies where the application of section 796(1) or 797(1) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.
- (2) The amount of disallowed credit may be taken into account as a deduction in computing the taxpayer's liability for income tax or corporation tax, but only in so far as it does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid (for which purpose payment of the foreign tax is to be taken into account, despite section 795(2)).
- (2) In section 803 of ICTA (underlying tax reflecting interest on loans)—
  - (a) in subsection (1)(d) for “section 798” substitute “ section 798A ”, and
  - (b) subsections (4) to (9) shall cease to have effect.
- (3) Subsections (1) and (2) shall have effect—
  - (a) for the purposes of corporation tax, in relation to a credit for foreign tax which relates to—
    - (i) a payment of foreign tax on or after 16th March 2005, or
    - (ii) income received on or after that date in respect of which foreign tax has been deducted at source, and
  - (b) for the purposes of income tax, in relation to a credit for foreign tax which relates to—
    - (i) a payment of foreign tax on or after 6th April 2005, or
    - (ii) income received on or after that date in respect of which foreign tax has been deducted at source.
- (4) In subsection (3) a reference to tax deducted at source is a reference to tax deducted or treated as deducted from income, or treated as paid in respect of income.
- (5) In respect of dividends paid before 1st January 2006, the effect of section 798 or 798A of ICTA in respect of credit for foreign tax shall be disregarded to the extent that it would otherwise reduce the allowable credit to less than 50% of the foreign tax; but this subsection shall not apply to tax paid as part of a scheme or arrangement designed or entered into for the purposes of causing this subsection to apply.

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## 87 Schemes and arrangements designed to increase relief

(1) After section 804 of ICTA insert—

### **“804ZA Schemes and arrangements designed to increase relief**

- (1) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to any income or chargeable gain taken or to be taken into account for the purposes of determining a person's liability to tax in a chargeable period, they may give the person a notice under this section.
- (2) Condition A is that, in the case of the person, there is in respect of the income or gain an amount of foreign tax for which, under any arrangements, credit is allowable against United Kingdom tax for that chargeable period.
- (3) Condition B is that there is a scheme or arrangement the main purpose, or one of the main purposes, of which is to cause an amount of foreign tax to be taken into account in the case of the person for that chargeable period.
- (4) Condition C is that the scheme or arrangement is a prescribed scheme or arrangement.
- (5) Condition D is that the amount referred to in subsection (6) is more than a minimal amount.
- (6) The amount is the aggregate of—
  - (a) the aggregate amount of the claims for credit that the person has made, or is in a position to make, for the chargeable period; and
  - (b) for all the persons connected to that person, the aggregate amount of the claims for credit that the connected person has made, or is in a position to make, for a corresponding chargeable period.
- (7) A chargeable period of a person (“A”) corresponds to a chargeable period of another person (“B”) if at least one day of A's chargeable period falls within B's chargeable period.
- (8) A notice under this section is a notice—
  - (a) informing the person of the Board's view under subsection (1),
  - (b) specifying the chargeable period in relation to which the Board formed that view,
  - (c) if the amount of foreign tax considered by the Board to satisfy condition B is an amount of underlying tax, specifying the body corporate resident in a territory outside the United Kingdom whose payment of foreign tax is relevant to that underlying tax, and
  - (d) informing the person that as a consequence section 804ZB has effect in relation to him.
- (9) A notice under this section may specify the adjustments of a person's tax return that, in the view of the Board, fall to be made by him under section 804ZB(2).
- (10) The adjustments specified may, in a case where the notice given to a person specifies a body corporate resident outside the United Kingdom, include treating the body corporate as having paid or being liable to pay only so much foreign tax as would have been allowed to it as a credit if it were resident in



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the United Kingdom and a notice under this section had been given to it as regards an amount of foreign tax.

- (11) Schedule 28AB makes provision about what constitutes a prescribed scheme or arrangement.
- (12) In this section and sections 804ZB and 804ZC “tax return” means—
- (a) a return under section 8, 8A or 12AA of the Management Act, or
  - (b) a company tax return;
- and “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.

#### **804ZB Effect of notice under section 804ZA**

- (1) This section applies in relation to a person if—
- (a) a notice under section 804ZA has been given to the person in respect of a chargeable period specified in the notice, and
  - (b) the chargeable period specified is a chargeable period in relation to which conditions A to D of section 804ZA are satisfied.
- (2) The person must in his tax return for the period make (or must amend his return for the period so as to make) such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 804ZA.

#### **804ZC Notices under section 804ZA: further provision**

- (1) Subsection (2) applies if the Board give a notice to a person under section 804ZA before the person has made his tax return for the chargeable period specified in the notice.
- (2) If the person makes a tax return for that period before the end of the period of 90 days beginning with the day on which the notice is given, he may—
- (a) make a tax return that disregards the notice, and
  - (b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the notice.
- (3) If a person has made a tax return for a chargeable period, the Board may only give him a notice under section 804ZA in relation to that period if a notice of enquiry has been given to him in respect of his tax return for that period.
- (4) After any enquiries into the person's tax return for that period have been completed, the Board may only give him a notice under section 804ZA in relation to that period if the requirements in subsections (5) and (7) are satisfied.
- (5) The first requirement is that at the time the enquiries were completed, the Board could not have been reasonably expected, on the basis of the information made available to them or to an officer of theirs before that time, to have been aware that the circumstances were such that a notice under section 804ZA could have been given to the person in relation to that period.

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- (6) For the purposes of subsection (5)—
  - (a) section 29(6) and (7) of the Management Act (information made available) applies as it applies for the purposes of section 29(5), and
  - (b) paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 applies as it applies for the purposes of paragraph 44(1).
- (7) The second requirement is that—
  - (a) the person was requested to produce, provide or furnish information during an enquiry into the return for that period, and
  - (b) if the person had duly complied with the request, the Board could have been reasonably expected to give the person a notice under section 804ZA in relation to that period.
- (8) If a person is given a notice under section 804ZA in relation to a chargeable period after having made a tax return for that period, the person may amend the return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with the day on which the notice is given.
- (9) If the notice under section 804ZA is given to the person after he has been given a notice of enquiry in respect of his tax return for the period, no closure notice may be given in relation to his tax return until—
  - (a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or
  - (b) the earlier amendment of the return for the purpose of complying with the notice.
- (10) If the notice under section 804ZA is given to the person after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—
  - (a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or
  - (b) the earlier amendment of the return for the purpose of complying with the notice.
- (11) Subsections (2)(b) and (8) do not prevent a person's tax return for a chargeable period becoming incorrect if—
  - (a) a notice under section 804ZA is given to the person in relation to that period,
  - (b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the notice, and
  - (c) the return ought to have been so amended.
- (12) In this section—
  - “closure notice” means a notice under—
    - (a) section 28A or 28B of the Management Act, or
    - (b) paragraph 32 of Schedule 18 to the Finance Act 1998;
  - “discovery assessment” means an assessment under—
    - (a) section 29 of the Management Act, or
    - (b) paragraph 41 of Schedule 18 to the Finance Act 1998;

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“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.”

- (2) Schedule 5 (which contains a Schedule to be inserted after Schedule 28AA to ICTA) has effect.
- (3) This section and Schedule 5 have effect in relation to a credit for foreign tax which relates to—
  - (a) a payment of foreign tax on or after the commencement date, or
  - (b) income received on or after the commencement date in respect of which foreign tax has been deducted at source.
- (4) In subsection (3) a reference to tax deducted at source is a reference to tax deducted or treated as deducted from income, or treated as paid in respect of income.
- (5) In subsection (3) “the commencement date” means—
  - (a) so far as the amount of the credit for foreign tax is affected by a scheme or arrangement to which paragraph 5 of Schedule 28AB to ICTA (as inserted by Schedule 5) applies, 10th February 2005, and
  - (b) so far as the amount of the credit for foreign tax is affected by any other prescribed scheme or arrangement (within the meaning of Schedule 28AB), 16th March 2005.

## 88 Self-assessment amendments

- (1) In section 9A of TMA 1970 (notice of enquiry), in subsection (4) (matters to which an enquiry extends) after paragraph (b) insert—
  - “(c) consideration of whether to give the taxpayer a notice under section 804ZA of the principal Act (schemes and arrangements designed to increase relief),”.
- (2) In section 29 of TMA 1970 (assessment where loss of tax discovered), after subsection (7) insert—
  - “(7A) The requirement to fulfil one of the two conditions mentioned above does not apply so far as regards any income or chargeable gains of the taxpayer in relation to which the taxpayer has been given, after any enquiries have been completed into the taxpayer's return, a notice under section 804ZA of the principal Act.”
- (3) In Schedule 18 to FA 1998 (company tax returns, assessments, etc), in paragraph 25(1) (scope of enquiry) after “medium-sized enterprise” insert “ or a notice under section 804ZA of the Taxes Act 1988 (schemes and arrangements designed to increase relief) ”.
- (4) In paragraph 42 of that Schedule (restrictions on power to make discovery assessment etc), after sub-paragraph (2) insert—
  - “(2A) Those restrictions, other than the restriction in paragraph 45, do not apply so far as regards any income or chargeable gains of the company in relation to which the company has been given, after any enquiries have been completed into the return, a notice under section 804ZA of the Taxes Act 1988.”

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- (5) The amendments made by this section have effect in accordance with section 87(3).

### *Controlled foreign companies*

## **89 ADP dividends and double taxation relief**

- (1) Section 801 of ICTA (dividends paid between related companies: relief for UK and third country taxes) is amended as follows.

- (2) In subsection (2A) (restriction on cases where section 799(1)(b) applies for the purposes of section 801(2)) after paragraph (a) insert—

“(aa) if the overseas company is an ADP controlled foreign company as respects any of its accounting periods and the dividend mentioned in subsection (1) above is an ADP dividend of that company (in which case see also subsection (2B)); or”.

- (3) After subsection (2A) insert—

“(2B) In any case falling within subsection (2A)(aa) above, section 799(1)(b) applies for the purposes of subsection (2) above as if for section 799(1A) there were substituted—

“(1A) The formula is—

$$\frac{D}{1-X} \times X$$

where—

D is the amount of the dividend; and

X is the maximum relievable rate, expressed as a decimal fraction;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid.”.

- (4) After subsection (5) insert—

“(6) For the purposes of this section—

- (a) a controlled foreign company is an “ADP controlled foreign company” as respects any of its accounting periods if, by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as respects that accounting period;
- (b) an “ADP dividend” of a controlled foreign company is a dividend by virtue of which the controlled foreign company is an ADP controlled foreign company as respects any of its accounting periods.

- (7) In this section—

“accounting period”, in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17 (see section 751);

“controlled foreign company” has the same meaning as in Chapter 4 of Part 17 (see section 747(2)).”.

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- (5) The amendments made by this section have effect where the dividend mentioned in section 799(1) of ICTA is paid on or after 2nd December 2004 and is, or represents, in whole or in part an ADP dividend of an ADP controlled foreign company.

## **90 Foreign taxation of group as single entity: exclusion of ADP CFCs**

- (1) Section 803A of ICTA is amended as follows.
- (2) After subsection (1) (company resident in territory outside the UK paying tax in respect of one or more other companies resident in that territory) insert—
- “(1A) Where—
- (a) a company is (within the meaning of section 801) an ADP controlled foreign company as respects any of its accounting periods, and
  - (b) the whole or any part of the profits or gains of that accounting period are included in the aggregate profits, or aggregate profits or gains, mentioned in subsection (1) above,
- subsection (2) below shall have effect as if the companies mentioned in subsection (1) above did not include that company.”.
- (3) The amendment made by this section has effect in relation to dividends paid on or after 16th March 2005.

### *Annual payments and double taxation relief*

## **91 Tax avoidance involving annual payments and double taxation relief**

- (1) ICTA is amended as follows.
- (2) In section 125 (annual payments for non-taxable consideration) in subsection (2) (payments to which the section applies) for paragraph (b) substitute—
- “(b) is made under a liability incurred for consideration in money or money's worth all or any of which—
- (i) consists of, or of the right to receive, a dividend, or
  - (ii) is not required to be brought into account in computing for the purposes of income tax or corporation tax the income of the person making the payment.”.

(3) As from 2nd December 2004, the title of that section accordingly becomes “Annual payments for dividends or non-taxable consideration”.

(4) Section 801 (dividends paid between related companies: relief for UK and third country taxes) is amended as follows.

(5) In subsection (2) (case where overseas company has received a dividend from a third company) for “subject to subsections (4) to (4D)” substitute “subject to subsection (4)”.

(6) Subsections (4A) to (4D) (which relate to cases where the amount given by the formula in section 799(1) exceeds U in that formula) shall cease to have effect.

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- (7) The amendment made by subsection (2) has effect in relation to any annual payment made on or after 2nd December 2004 (whether the contract or other arrangement is one made before, on or after that date).
- (8) The amendments made by subsections (4) to (6) have effect in relation to dividends paid on or after 2nd December 2004.

## CHAPTER 10

### MISCELLANEOUS

#### *Capital allowances*

#### **92 Capital allowances: renovation of business premises in disadvantaged areas**

Schedule 6 (capital allowances in respect of expenditure on the conversion or renovation of qualifying business premises in disadvantaged areas) has effect in relation to expenditure incurred on or after such day as the Treasury may by order appoint.

#### *Tonnage tax*

#### **93 Tonnage tax**

Schedule 7 (which makes provision amending Schedule 22 to FA 2000) has effect.

## PART 3

### STAMP TAXES

#### *Stamp duty land tax*

#### **94 Alternative property finance**

Schedule 8 (which makes amendments of Part 4 of FA 2003 relating to alternative property finance) has effect.

#### *Stamp duty land tax and stamp duty*

#### **<sup>F52</sup>95 Raising of thresholds**

.....

#### **Textual Amendments**

**F52** S. 95 repealed (with effect in accordance with Sch. 26 Pt. 7(1) Note of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 7\(1\)](#)

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## **96 Removal of disadvantaged areas relief for non-residential property**

Schedule 9 (which provides for the removal, in relation to non-residential property, of relief from stamp duty land tax and stamp duty for land in disadvantaged areas) has effect.

*Stamp duty and stamp duty reserve tax*

## **97 Demutualisation of insurance companies**

- (1) Section 90 of FA 1986 (other exceptions to the principal charge to stamp duty reserve tax under section 87 of that Act) is amended as follows.
- (2) In subsection (1A) (section 87 not to apply to agreement to transfer unit under unit trust scheme if instrument giving effect to agreement would be exempt from stamp duty by virtue of provision in paragraph (a) or (b)) after paragraph (b) insert “, or  
(c) section 96 of the Finance Act 1997 (demutualisation of insurance companies).”.
- (3) Schedule 19 to FA 1999 (stamp duty and stamp duty reserve tax: unit trusts) is amended as follows.
- (4) In paragraph 6 (exclusion, in certain cases of change of ownership, of charge to stamp duty reserve tax on surrender of unit to managers) in sub-paragraph (5) (provisions under which certain instruments would be exempt from stamp duty) after paragraph (b) insert “; and  
(c) section 96 of the Finance Act 1997 (demutualisation of insurance companies).”.
- (5) The amendment in subsection (2) applies where the relevant day for the purposes of section 87 of FA 1986 falls on or after the day on which this Act is passed.
- (6) The amendment in subsection (4) applies in relation to surrenders (within the meaning of Part 2 of Schedule 19 to FA 1999) occurring on or after the day on which this Act is passed.

## **PART 4**

### **OTHER TAXES**

*Inheritance tax*

## **98 Rates and rate bands for the next three years**

- (1) For the Table in Schedule 1 to IHTA 1984 (rates and rate bands), as it has effect from time to time, there shall be successively substituted—
  - (a) the 2005-06 Table, which shall apply to any chargeable transfer made on or after 6th April 2005 (but before 6th April 2006),
  - (b) the 2006-07 Table, which shall apply to any chargeable transfer made on or after 6th April 2006 (but before 6th April 2007), and
  - (c) the 2007-08 Table, which shall apply to any chargeable transfer made on or after 6th April 2007.

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- (2) Subsection (1)(c) is without prejudice to the application of section 8 of IHTA 1984 (indexation) by virtue of the difference between the retail prices index for the month of September in 2006 or any later year and that for the month of September in the following year.

- (3) The 2005-06 Table is—

TABLE OF RATES OF TAX

<i>Portion of value</i>		<i>Rate of tax</i>
<b>Lower limit (£)</b>	<b>Upper limit (£)</b>	<b>Per cent.</b>
0	275,000	Nil
275,000		40

- (4) The 2006-07 Table is—

TABLE OF RATES OF TAX

<i>Portion of value</i>		<i>Rate of tax</i>
<b>Lower limit (£)</b>	<b>Upper limit (£)</b>	<b>Per cent.</b>
0	285,000	Nil
285,000		40

- (5) The 2007-08 Table is—

TABLE OF RATES OF TAX

<i>Portion of value</i>		<i>Rate of tax</i>
<b>Lower limit (£)</b>	<b>Upper limit (£)</b>	<b>Per cent.</b>
0	300,000	Nil
300,000		40

- (6) Section 8(1) of IHTA 1984 (indexation of rate bands) shall not have effect as respects any difference between the retail prices index—

- (a) for the month of September 2003 and that for the month of September 2004,
- (b) for the month of September 2004 and that for the month of September 2005, or
- (c) for the month of September 2005 and that for the month of September 2006.

### *Landfill tax*

## **99 Rate of landfill tax**

- (1) In section 42 of FA 1996 (amount of landfill tax) for the amount specified in subsection (1)(a), and the corresponding amount specified in subsection (2), substitute “£18”.



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- (2) The amendments made by this section have effect in relation to taxable disposals made, or treated as made, on or after 1st April 2005.

### *Lorry road-user charge*

## **100 Lorry road-user charge**

For section 137(7) of FA 2002 (lorry road-user charge: preparatory expenditure) substitute—

- “(7) A Minister of the Crown or government department may—
- (a) incur expenditure in connection with preparations for lorry road-user charge (including any fuel credit to be paid in respect of fuelling of lorries chargeable in respect of lorry road-user charge);
  - (b) enter into contracts in respect of the development or provision of equipment, systems or services to be used in connection with lorry road-user charge (including any fuel credit).”

## **PART 5**

### **PENSIONS ETC**

## **101 Pension schemes etc.**

Schedule 10 contains provision about pension schemes and related matters.

## **102 Pension Protection Fund etc.**

- (1) The Treasury may by regulations make provision for and in connection with the application of the relevant taxes in relation to—
- (a) the Pension Protection Fund,
  - (b) the Fraud Compensation Fund, and
  - (c) the Board of the Pension Protection Fund,
- and in relation to any person in connection with either of those Funds or that Board.
- (2) The provision that may be made by the regulations includes provision imposing any of the relevant taxes (as well as provision for exemptions or reliefs).
- (3) The relevant taxes are—
- (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - (d) inheritance tax,
  - (e) value added tax, and
  - (f) stamp duty land tax.
- (4) The regulations may, in particular, include provision for and in connection with the taxation of payments made in accordance with the pension compensation provisions

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- (within the meaning of Part 2 of the Pensions Act 2004 (c. 35): see section 162(2) of that Act).
- (5) The exemptions and reliefs that may be given by the regulations include, in particular, exemption from—
- (a) charges to corporation tax in respect of any income arising from any assets of the Board (or in either Fund) and other receipts of the Board (or either Fund) and any chargeable gains arising from the disposal of any assets of the Board (or in either Fund),
  - (b) charges to income tax and corporation tax in respect of the levies referred to in sections 117, 174, 175, 189 and 209 of the Pensions Act 2004, and
  - (c) any charge to capital gains tax, or corporation tax on chargeable gains, in respect of the receipt of fraud compensation payments (within the meaning of Part 2 of that Act: see section 182(1) of that Act).
- (6) The regulations may make provision in relation to any time after 5th April 2005.
- (7) The provision made by the regulations may be framed as provision applying with appropriate modifications—
- (a) for times before 6th April 2006, provisions having effect in relation to exempt approved schemes (within the meaning of Chapter 1 of Part 14 of ICTA: see section 592(1) of that Act), and
  - (b) for times on or after that date, provisions having effect in relation to registered pension schemes (within the meaning of section 832(1) of ICTA).
- (8) The regulations may include—
- (a) provision amending any enactment or instrument, and
  - (b) consequential, supplementary and transitional provisions.
- (9) The regulations are to be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section—
- “the Board of the Pension Protection Fund” means the body corporate established under section 107 of the Pensions Act 2004 (c. 35),
  - “the Fraud Compensation Fund” means the Fund required to be held, managed and applied by that Board under paragraph (b) of subsection (1) of section 110 of that Act, and
  - “the Pension Protection Fund” means the Fund required to be held, managed and applied by that Board under paragraph (a) of that subsection.

## PART 6

### MISCELLANEOUS

#### 103 Civil partnerships etc

- (1) In the case of any tax or duty, the Treasury may by regulations make provision for the purpose of securing that the events or persons specified in column 1 of the Table are treated in the same way as (or a similar way to) the corresponding events or persons specified in column 2 of the Table.

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### 1. Events or persons

### 2. Corresponding events or persons

- |                                                                                                  |                                                                                            |
|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| 1. The formation of a civil partnership.                                                         | A marriage.                                                                                |
| 2. Persons who are, have been, or may in future be, civil partners of each other.                | Persons who are, have been, or may in future be, married to each other.                    |
| 3. Persons who are not civil partners of each other but who are living together as if they were. | Persons who are not married to each other but who are living together as husband and wife. |
| 4. Persons who are not civil partners of each other.                                             | Persons who are not married to each other.                                                 |
| 5. A person who is not a civil partner of any other person.                                      | A person who is not married.                                                               |
- 

- (2) The provision that may be made by regulations under subsection (1) includes provision for or in connection with varying, for the purpose specified in subsection (1), the treatment that would, apart from the regulations, apply—
- on the occurrence of an event specified in column 2 of the Table, or
  - in the case of persons specified in column 2 of the Table.
- (3) The Treasury may by regulations make provision for the purpose of removing any inequality of treatment of persons based on gender or, in the case of a parent, marital status.
- (4) Any power to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (6) The provision that may be made by regulations under this section includes provision—
- amending any enactment, or
  - applying any provision of any enactment with or without modifications.
- (7) Any power to make regulations under this section includes power—
- to make different provision for different cases;
  - to make incidental, supplemental, consequential or transitional provision or savings.
- (8) The powers conferred by this section are exercisable in relation to enactments (including enactments contained in, or made under, this Act) passed or made at any time before the end of the Session following that in which this Act is passed.
- (9) In this section—
- “civil partnership” means a civil partnership which exists under or by virtue of the Civil Partnership Act 2004 (c. 33) (and “civil partner” is to be read accordingly);
- “enactment” includes any provision comprised in—
- an Act of the Scottish Parliament;
  - Northern Ireland legislation;
  - an instrument made under any enactment.

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## PART 7

### SUPPLEMENTARY PROVISIONS

#### 104 Repeals

- (1) The enactments mentioned in Schedule 11 (which include provisions that are spent or of no practical utility) are repealed to the extent specified.
- (2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

#### 105 Interpretation

In this Act—

- “ALDA 1979” means the Alcoholic Liquor Duties Act 1979 (c. 4);
- “CAA 2001” means the Capital Allowances Act 2001 (c. 2);
- “FA”, followed by a year, means the Finance Act of that year;
- “F(No.2)A”, followed by a year, means the Finance (No.2) Act of that year;
- “HODA 1979” means the Hydrocarbon Oil Duties Act 1979 (c. 5);
- “ICTA” means the Income and Corporation Taxes Act 1988 (c. 1);
- “IHTA 1984” means the Inheritance Tax Act 1984 (c. 51);
- “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003 (c. 1);
- “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5);
- “TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12);
- “TMA 1970” means the Taxes Management Act 1970 (c. 9);
- “VERA 1994” means the Vehicle Excise and Registration Act 1994 (c. 22).

#### 106 Short title

This Act may be cited as the Finance Act 2005.

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## SCHEDULES

### SCHEDULE 1

Sections 28 and 33

#### NON-UK RESIDENT VULNERABLE PERSONS: INTERPRETATION

##### *Vulnerable person's actual income*

- 1 The “vulnerable person's actual income” for the tax year means the income that would arise (or be treated as arising) under the Income Tax Acts to the vulnerable person in the tax year on the assumption that the vulnerable person is resident and domiciled in the United Kingdom throughout the tax year.

##### *Trustees' specially taxed income*

- 2 The “trustees' specially taxed income” for the tax year means income arising (or treated as arising) to the trustees in the tax year from property held on qualifying trusts for the benefit of the vulnerable person in connection with which special income tax treatment applies for the tax year in accordance with section 25 by virtue of a claim for special tax treatment under this Chapter.

##### *Vulnerable person's deemed CGT taxable amount*

- 3 (1) The “vulnerable person's deemed CGT taxable amount” for the tax year means the sum of—
- (a) the vulnerable person's taxable amount for the tax year for the purposes of section 3 of TCGA 1992 calculated by reference only to actual gains and actual losses, and
  - (b) the vulnerable person's taxable amount for the tax year for the purposes of that section calculated by reference only to assumed gains and assumed losses.
- (2) But in calculating the taxable amount under sub-paragraph (1)(b)—
- (a) no deduction is to be made under section 2(2)(b) of TCGA 1992, and
  - (b) the words “except as provided by section 62” in section 2(3) of that Act are to be disregarded.
- (3) In determining the vulnerable person's deemed CGT taxable amount for the tax year any claims or elections made in relation to any assumed gains of the vulnerable person are to be disregarded.
- (4) In this paragraph—
- (a) “actual gains” and “actual losses” have the meanings given in paragraph 5, and
  - (b) “assumed gains” and “assumed losses” have the meanings given in paragraph 6.

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*Vulnerable person's notional section 77 gains*

- 4 (1) The “vulnerable person's notional section 77 gains” for the tax year means the chargeable gains that would be treated as accruing to the vulnerable person in the tax year under section 77 of TCGA 1992 by virtue of section 31 of this Act if the relevant assumptions were made.
- (2) In this paragraph “relevant assumptions” has the meaning given in paragraph 7.

*Actual gains and actual losses*

- 5 (1) “Actual gains” means any chargeable gains which accrue to the vulnerable person and in respect of which he is chargeable to capital gains tax for the tax year.
- (2) “Actual losses” means—
- (a) any allowable losses accruing to the vulnerable person in the tax year, and
  - (b) so far as they have not been allowed as a deduction from chargeable gains accruing to him in any previous tax year, any allowable losses accruing to him in any previous tax year (not earlier than that beginning on 6th April 1965).

*Assumed gains and assumed losses*

- 6 (1) “Assumed gains” means any chargeable gains, other than actual gains, which, on the relevant assumptions, would accrue to the vulnerable person and in respect of which, on those assumptions, he would be chargeable to capital gains tax for the tax year.
- (2) “Assumed losses” means any allowable losses, other than actual losses, which, on the relevant assumptions, would accrue to the vulnerable person in the tax year.
- (3) In this paragraph “relevant assumptions” has the meaning given in paragraph 7.

*Relevant assumptions*

- 7 (1) For the purposes of paragraphs 4 and 6 the “relevant assumptions” are—
- (a) that the vulnerable person is resident and domiciled in the United Kingdom throughout the tax year, and
  - (b) that he has given a notice under subsection (2A) of section 16 of TCGA 1992 (computation of losses) in respect of each loss accruing to him in the tax year which by virtue of subsection (3) of that section would not be an allowable loss (but for the assumption in paragraph (a)).
- (2) But the relevant assumption in sub-paragraph (1)(a) does not apply for the purposes of section 10A of TCGA 1992 (temporary non-residents).

SCHEDULE 2

Section 55

ALTERNATIVE FINANCE ARRANGEMENTS: FURTHER PROVISIONS

*Interpretation of Schedule*

- 1 In this Schedule, “relevant arrangements” means—

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- (a) arrangements falling within section 47 under which the person referred to in that section as Y is a financial institution, or
- (b) arrangements falling within section 49 [<sup>F53</sup>or 49A].

#### Textual Amendments

**F53** Words in Sch. 2 para. 1(b) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 95(8)

#### *Taxes Management Act 1970 (c. 9)*

- 2 In sections 17 and 18 of TMA 1970 (interest paid etc. without deduction of income tax), references to interest include references to alternative finance return or profit share return.

#### *Income and Corporation Taxes Act 1988 (c. 1)*

- 3 Section 349 of ICTA (certain payments to be made subject to deduction of income tax) has effect in relation to alternative finance return or profit share return as it has effect in relation to interest.

<sup>F54</sup>4 .....

#### Textual Amendments

**F54** [Sch. 2 para. 4](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), regs. 1(1), 92(2)

- 5 Section 477A of ICTA (building societies: regulations for deduction of tax) applies in relation to alternative finance return and profit share return paid or credited under relevant arrangements as it applies in relation to interest paid or credited in respect of a deposit or loan.
- 6 Sections 480A to 482 of ICTA (relevant deposits: deduction of tax from interest payments etc.) have effect as if—
  - (a) relevant arrangements were a deposit, and
  - (b) alternative finance return or profit share return payable under relevant arrangements were interest.
- 7 In section 582 of ICTA (funding bonds) references to interest include references to alternative finance return or profit share return.
- 8 Section 787 of ICTA (restriction of relief for payments of interest) has effect in relation to alternative finance return or profit share return as it has effect in relation to interest.

#### *Finance Act 1996 (c. 8)*

- 9 In paragraph 8(2)(a) of Schedule 10 to FA 1996 (loan relationships: collective investment schemes), the reference to money placed at interest includes a reference to money invested under relevant arrangements.

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*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 10 In section 380 of ITTOIA 2005 (funding bonds), references to interest include references to alternative finance return or profit share return.

F55 SCHEDULE 3

Section 59

.....

**Textual Amendments**

- F55** Sch. 3 repealed (with effect in accordance with Sch. 26 Pt. 3(4) Note 1 of the amending Act) by Finance Act 2006 (c. 25), Sch. 26 Pt. 3(4)

SCHEDULE 4

Section 80

ACCOUNTING PRACTICE AND RELATED MATTERS

**PART 1**

BAD DEBTS AND RELATED MATTERS

*ICTA*

- 1 In section 74 of ICTA (general rules as to deductions not allowable), omit subsection (1)(j) and subsection (2) (bad debts and related matters).
- 2 Before section 89 of ICTA insert—

**Restriction of deductions in respect of certain debts**

“88D(1) This section applies to debts to which the following provisions do not apply—

- (a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships, etc);
- (b) Schedule 26 to the Finance Act 2002 (derivative contracts);
- (c) Schedule 29 to that Act (intangible fixed assets).

(2) In calculating the profits of a company's trade for the purposes of corporation tax, no deduction is allowed in respect of a debt owed to the company, except—

- (a) by way of impairment loss, or
- (b) to the extent that the debt is released wholly and exclusively for the purposes of that trade as part of a statutory insolvency arrangement.

(3) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

(4) In this section “trade” has the meaning given by section 6(4).”.



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- 3 (1) Section 89 of ICTA (debts proving to be irrecoverable after discontinuance etc) is amended as follows.
- (2) In that section as it had effect before ITTOIA 2005—
- (a) make the existing provision subsection (1),
  - (b) for “deduction allowed in respect of them under section 74(j)” substitute “relevant deduction in respect of them”, and
  - (c) at the end add—
- “(2) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.
- The references to a debt being irrecoverable shall be read accordingly.
- (3) For the purposes of this section “relevant deduction”, in relation to a debt, means a deduction made for tax purposes in respect of an impairment loss or release.”.
- (3) In that section as substituted by ITTOIA 2005—
- (a) in subsection (3), for the words from “deduction allowed” to “ITTOIA 2005” substitute “relevant deduction in respect of them”, and
  - (b) after that subsection add—
- “(4) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.
- The references to a debt being irrecoverable shall be read accordingly.
- (5) For the purposes of this section “relevant deduction”, in relation to a debt, means a deduction made for tax purposes in respect of an impairment loss or release.”.
- 4 (1) Section 94 of ICTA (debts deducted and subsequently released) is amended as follows.
- (2) In subsection (1) for “relevant arrangement or compromise” substitute “statutory insolvency arrangement”.
- (3) Omit subsection (2).
- 5 (1) Section 103 of ICTA (receipts after discontinuance) is amended as follows.
- (2) In subsection (4)(b) for “relevant arrangement or compromise” substitute “statutory insolvency arrangement”.
- (3) Omit subsection (4A).
- (4) In subsection (5) as it had effect before ITTOIA 2005 for “a deduction has been allowed in respect of that sum under section 74(j)” substitute “a deduction has been made for tax purposes in respect of an impairment loss or a release of liability”.
- (5) In subsection (5) as amended by ITTOIA 2005 for “a deduction has been allowed in respect of that sum under section 74(j) or section 35 of ITTOIA 2005” substitute “a deduction has been made for tax purposes in respect of an impairment loss or a release of liability”.

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

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F56

#### Textual Amendments

**F56** Sch. 4 para. 6 repealed (retrospectively) by Finance (No. 2) Act 2005 (c. 22), Sch. 6 para. 4(1)(6), Sch. 11 Pt. 2(6)

7 In section 799 of ICTA (double taxation relief: computation of underlying loss), in subsection (6)(b) after “bad debts” insert “ , impairment losses ”.

8 In section 834(1) of ICTA (interpretation of the Corporation Tax Acts), at the appropriate place insert—

““statutory insolvency arrangement” means—

- (a) a voluntary arrangement that has taken effect under or as a result of the Insolvency Act 1986, Schedule 4 or 5 to the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989,
- (b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986, or
- (c) any arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) above that has taken effect under or by virtue of the law of a country or territory outside the United Kingdom;”.

#### FA 1996

9 (1) Section 100 of FA 1996 (interest, and exchange gains and losses, on debts etc not arising from the lending of money) is amended as follows.

(2) For the heading substitute “ **Money debts etc not arising from the lending of money** ”.

(3) In subsection (1)(c) (money debts to which the section applies), after subparagraph (ii) insert—

“or

- (iii) in respect of which a payment would fall to be brought into account for the purposes of corporation tax as a receipt of a trade, Schedule A business or overseas property business carried on by the company, and in relation to which an impairment loss (or a credit in respect of the reversal of an impairment loss) arises to the company;”.

(4) In subsection (2) for paragraphs (a) and (b) substitute—

- “(a) this Chapter has effect in relation to the matters mentioned in subsection (1)(c) above as it has effect in relation to such matters arising under or in relation to a loan relationship, but
- (b) the only credits or debits to be brought into account for the purposes of this Chapter in respect of the relationship are those relating to those matters;”.

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(5) After subsection (13) add—

- “(14) This section does not apply to a debt in respect of which profits, gains or losses (if any) fall to be brought into account under—
- (a) Schedule 26 to the Finance Act 2002 (derivative contracts), or
  - (b) Schedule 29 to that Act (gains and losses from intangible fixed assets).”.

F57 10 .....

#### Textual Amendments

**F57** Sch. 4 para. 10 repealed (with effect in accordance with Sch. 6 para. 5(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 11 Pt. 2(6) Note 2

11 (1) Paragraph 5 of Schedule 9 to FA 1996 (release of liability under debtor relationship) is amended as follows.

(2) In the heading, at the end add “ : cases in which credit need not be brought into account ”.

(3) In sub-paragraph (3) for “four” substitute “ five ”.

(4) In sub-paragraph (4) for “relevant arrangement or compromise within the meaning given by section 74(2) of the Taxes Act 1988” substitute “ statutory insolvency arrangement ”.

(5) In sub-paragraph (5) at the end add— “ This condition does not apply in the case of a credit required to be brought into account by virtue of paragraph 4A (deemed release on impaired debt becoming held by connected company). ”.

(6) After sub-paragraph (7) insert—

“(8) Condition 5 is that the release is in consideration of, or of any entitlement to, shares forming part of the ordinary share capital of the debtor company.”.

12 After paragraph 5 of Schedule 9 to FA 1996 insert—

*“Release of liability under creditor relationship:  
 application of provisions relating to impairment losses*

5ZA The provisions of—

- (a) paragraph 5A (impairment losses and consortium relief), and
- (b) paragraphs 6, 6A and 6C (restrictions on bringing impairment losses into account),

apply in relation to a debit in respect of a release by a company of liability under a creditor relationship of the company as they apply in relation to an impairment loss.”.

13 (1) Paragraph 6 of Schedule 9 to FA 1996 (impairment losses where parties have a connection) is amended as follows.

(2) In sub-paragraph (2) for “sub-paragraphs (3) to (6) and paragraphs 6A and 6B” substitute “ sub-paragraph (3) (and the provisions mentioned there) and sub-paragraph (6) ”.

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- (3) In sub-paragraph (3) for paragraphs (a) to (c) substitute—
    - “(a) sub-paragraph (4) below, or
    - (b) paragraph 6A.”.
  - (4) For sub-paragraphs (6) and (7) substitute—
    - “(6) Where in any period a related transaction takes place in relation to the loan relationship—
      - (a) the debits brought into account for that period in respect of the relationship must not be more than they would have been if the transaction had not taken place, and
      - (b) the credits brought into account for that period in respect of the relationship must not be less than they would have been if the transaction had not taken place.
    - (7) In determining for the purposes of sub-paragraph (6) the debits and credits that would have been brought into account if the related transaction had not taken place, no account shall be taken of any amounts that would have accrued at times after the transaction took place.”.
  - (5) The amendments in this paragraph have effect in relation to any related transaction taking place on or after 2nd December 2004.
- 14 Omit paragraph 6B of Schedule 9 to FA 1996 (impairment losses: companies becoming connected).
- 15 In paragraph 6C of Schedule 9 to FA 1996—
  - (a) in sub-paragraph (1), for “sub-paragraphs (2) and (3) below shall apply” substitute “sub-paragraph (3) applies”, and
  - (b) omit sub-paragraph (2).
- 16 After paragraph 6C of Schedule 9 to FA 1996 insert—
- “Restriction on bringing into account debits resulting from revaluation*
- 6D (1) No debit shall be brought into account for the purposes of this Chapter as a result of the revaluation of an asset representing a creditor relationship of a company, except—
  - (a) an impairment loss, or
  - (b) a debit resulting from a release by the company of any liability under the relationship.
- (2) No credit may be brought into account for the purposes of this Chapter in respect of the reversal of—
  - (a) a debit disallowed by sub-paragraph (1),
  - (b) a debit that in a period of account beginning before 1st January 2005 was disallowed for tax purposes—
    - (i) because of the assumption required by paragraph 5(1) above, or
    - (ii) because the exceptions in section 74(1)(j) of the Taxes Act 1988 did not apply.
- (3) The reference in sub-paragraph (1) to revaluation of an asset includes any case where a provision or allowance is made by the company

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reducing the carrying value of the asset or of a group of assets including the asset in question.

(4) This paragraph does not affect the debits to be brought into account in respect of exchange gains or losses.

(5) This paragraph does not apply if fair value accounting is used.”.

- 17 (1) The following provisions of Schedule 9 to FA 1996 shall cease to have effect—
- (a) paragraph 8 (restriction on writing off overseas sovereign debt etc.);
  - (b) paragraph 9 (restriction on bringing into account losses on overseas sovereign debt etc.).
- (2) Where at the end of the last period of account of a company before sub-paragraph (1) (a) has effect—
- (a) the company is one to which a relevant overseas debt (within the meaning of paragraph 8) is owed, and
  - (b) the effect of that paragraph (or a corresponding earlier enactment) having applied is that the aggregate amount of the debits (less any credits) brought into account by the company for tax purposes in respect of the loan relationship over the period for which the company has been party to it is less than would otherwise have been the case,
- the balance may be brought into account for the purposes of Chapter 2 of Part 4 of FA 1996 (loan relationships) as a debit in the company's next period of account.
- (3) Where at the end of the last period of account of a company before sub-paragraph (1) (b) has effect—
- (a) the company has ceased to be a party to a loan relationship, and
  - (b) the effect of paragraph 9 (or a corresponding earlier enactment) is that part of the loss arising has not been brought into account for tax purposes,
- nothing in this paragraph prevents any debit that could have been brought into account for the purposes of Chapter 2 of Part 4 of FA 1996 (loan relationships) under paragraph 9(4) and (5) in a subsequent period of account from being so brought into account.

#### FA 1997

- 18 (1) Schedule 12 to FA 1997 (leasing arrangements: finance leases and loans) is amended as follows.
- (2) In paragraph 9(7) (relief for bad debts etc: cumulative accountancy rental excess), for the definition of “bad debt deduction” substitute—
- ““bad debt deduction”, in relation to a period of account, means the aggregate of any deductions falling to be made for accounting purposes for that period by way of impairment loss in respect of rents from the lease of the asset;”.
- (3) In paragraph 10(7) (relief for bad debts etc: cumulative normal rental excess), for the definition of “bad debt deduction” substitute—
- ““bad debt deduction”, in relation to a period of account, means the aggregate of any deductions falling to be made for accounting purposes

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for that period by way of impairment loss in respect of rents from the lease of the asset;”.

#### *Schedule 26 to FA 2002*

- 19      In paragraph 22(5) of Schedule 26 to FA 2002 (derivative contracts release of liability) for “relevant arrangement or compromise within the meaning given by section 74(2) of the Taxes Act 1988” substitute “ statutory insolvency arrangement ”.

#### *Schedule 29 to FA 2002*

- 20      (1) In Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets), paragraph 115 (bad debts etc) is amended as follows.
- (2) For sub-paragraph (1) substitute—
- “(1) No debit may be brought into account for the purposes of this Schedule in respect of a debt owed to the company, except—
- (a) by way of impairment loss, or
- (b) to the extent that the debt is released as part of a statutory insolvency arrangement.”.
- (3) Omit sub-paragraph (2).
- (4) In sub-paragraph (3) for “sub-paragraph (1)(c)” substitute “ sub-paragraph (1)(b) ”.
- (5) After sub-paragraph (5) insert—
- “(6) In this paragraph “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.”.

## PART 2

### OTHER PROVISIONS CONNECTED WITH ACCOUNTING PRACTICE

#### *ICTA*

- 21      In section 43A of ICTA (rent factoring: meaning of “finance agreement”), in subsection (3) (reference to consolidated group accounts), omit paragraphs (a) and (b) and the word “and” preceding paragraph (a).
- 22      In section 75A(10) of ICTA (accounting period to which expenses of management are referable)—
- (a) in paragraph (a) after “profit and loss account” insert “ or income statement ”, and
- (b) in paragraph (b), after “gains and losses” insert “ , statement of changes in equity ”.
- 23      In section 501A of ICTA (supplementary charge in respect of ring-fence trades), in subsection (10) (reference to group accounts) for paragraph (b) substitute—
- “(b) are drawn up in accordance with generally accepted accounting practice.”.

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- 24 (1) Section 747A of ICTA (special rule requiring chargeable profits of controlled foreign companies to be computed in currency of accounts of company's first relevant accounting period) shall cease to have effect.
- (2) This amendment has effect in relation to accounting periods beginning on or after 16th March 2005.
- 25 Section 836A of ICTA (meaning of generally accepted accounting practice) shall cease to have effect.

#### FA 1996

- 26 (1) Section 85B of FA 1996 (loan relationships: amounts recognised in determining company's profit or loss) is amended as follows.
- (2) In subsection (1)(a) after “profit and loss account” insert “ or income statement ”.
- (3) For subsection (2) substitute—
- “(2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in subsection (1) shall be brought into account for the purposes of this Chapter in computing the company's profits and losses for the period to which the statement relates.
- This does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.”.
- (4) In subsection (3)—
- (a) in paragraph (a) after “subsection (1)” insert “ or (2) ”, and
- (b) in paragraph (b) for “subsection (1)” substitute “ that subsection ”.
- (5) In subsection (4) after “subsection (1)” insert “ or (2) ”.
- 27 (1) Section 94 of FA 1996 (loan relationships: treatment of indexed gilt-edged securities) shall be deemed not to have been repealed by paragraph 12 of Schedule 10 to FA 2004.
- Paragraph 12(3) of Schedule 25 to FA 2002 (which amended that section) shall also be deemed not to have been repealed by Division (6) of Part 2 of Schedule 42 to FA 2004.
- (2) That section is, instead, amended as follows.
- (3) For subsections (1) to (3A) substitute—
- “(1) In the case of a loan relationship represented by an index-linked gilt-edged security—
- (a) the amounts to be brought into account for the purposes of this Chapter must be determined using fair value accounting, and
- (b) the following adjustment shall be made in computing those amounts.
- (2) The adjustment shall be made wherever—
- (a) those amounts fall to be determined by reference to the value of the security at two different times, and
- (b) there is a change in the retail prices index between those times.

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- (3) The adjustment is made to the carrying value of the security at the earlier time and is to increase or, as the case may be, reduce it by the same percentage as the percentage increase or reduction in the retail prices index between the earlier and the later time.”.

28 (1) Section 94A of FA 1996 (loan relationships with embedded derivatives) is amended as follows.

- (2) In subsection (1) for “is permitted or required in accordance with generally accepted accounting practice to treat” substitute “ in accordance with generally accepted accounting practice treats ”.

<sup>F58</sup>(3) .....

<sup>F58</sup>(4) .....

#### Textual Amendments

**F58** Sch. 4 para. 28(3)(4) repealed (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), Sch. 11 Pt. 2(6)

<sup>F59</sup>29 .....

#### Textual Amendments

**F59** Sch. 4 para. 29 repealed (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), Sch. 11 Pt. 2(6)

30 In Schedule 9 to FA 1996 (loan relationships: special computational provisions), after paragraph 14 (debits and credits treated as relating to capital expenditure) insert—

#### *“Debits and credits recognised in equity or shareholders' funds*

14A Where in accordance with generally accepted accounting practice a debit or credit for a period in respect of a loan relationship of a company—

- (a) is recognised in equity or shareholders' funds, and
- (b) is not recognised in any of the statements mentioned in section 85B(1),

the debit or credit shall be brought into account for that period for the purposes of this Chapter in the same way as a debit or credit that, in accordance with generally accepted accounting practice, is brought into account in determining the company's profit or loss for that period.”.

31 (1) Paragraph 19A of Schedule 9 to FA 1996 (loan relationships: adjustment on change of accounting policy) is amended as follows.

- (2) In sub-paragraph (4), after “means” insert “, subject to sub-paragraph (4B), ”.

(3) After that sub-paragraph insert—

“(4A) For the purposes of this paragraph the “carrying value” of an asset or liability includes amounts recognised for accounting purposes in relation to the loan relationship in respect of—

- (a) accrued amounts;



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- (b) amounts paid or received in advance;
- (c) impairment losses (including provisions for bad or doubtful debts).

(4B) In determining the profits, gains and losses to be recognised in determining the carrying value of the asset or liability for the purposes of this paragraph, the following provisions—

- (a) section 87(2) (accounting method where parties have a connection),
- (b) section 88A(4) (accounting method where rate of interest is reset),
- (c) section 94 (loan relationships: treatment of indexed gilt-edged securities),
- (d) section 94A(2) (loan relationships with embedded derivatives),
- (e) section 96(2) (special rules for certain gilts),
- (f) section 154(6) (FOTRA securities: certain amounts not to be brought into account), and
- (g) paragraphs 1, 1A, 2, 6, 12 and 18 of this Schedule (special computational provisions),

apply as they apply for the purposes of determining the credits and debits to be brought into account under this Chapter.

(4C) Where—

- (a) a company has ceased to be a party to a loan relationship,
- (b) section 103(6) (credits and debits to be brought into account in respect of profits, gains and losses arising in the cessation period) applied to the cessation, and
- (c) there is a difference between—
  - (i) the amount outstanding in respect of the loan relationship at the end of the earlier period, and
  - (ii) the amount outstanding in respect of the loan relationship at the beginning of the later period,

a debit or credit (as the case may be) corresponding to that difference shall be brought into account for the purposes of this Chapter at the beginning of the later period.

(4D) In sub-paragraph (4C), “the amount outstanding”, in respect of a loan relationship, means so much of the amount recognised as deferred income or deferred loss in the company's balance sheet, in accordance with generally accepted accounting practice, in respect of the profits, gains or losses that arose from that relationship or a related transaction in the cessation period (within the meaning of section 103(6)) as has not been represented by credits or debits brought into account under this Chapter.”.

(4) In sub-paragraph (5) after “sub-paragraph (3)” insert “ or (4C) ”.

(5) Omit sub-paragraph (6).

#### FA 1997

32 In Schedule 12 to FA 1997 (leasing arrangements: finance leases and loans), in paragraph 30(1) (interpretation) omit the definitions of “consolidated group accounts”, “group of companies” and “member” in relation to a group of companies.

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### *CAA 2001*

- 33 In section 219 of CAA 2001 (finance leases), in subsection (3) (reference to group accounts) for paragraph (b) substitute—  
 “(b) are drawn up in accordance with generally accepted accounting practice.”.

### *Schedule 26 to FA 2002*

- 34 (1) Paragraph 17B of Schedule 26 to FA 2002 (derivative contracts: amounts recognised in determining company's profit or loss) is amended as follows.  
 (2) In sub-paragraph (1)(a) after “profit and loss account” insert “ or income statement ”.  
 (3) For sub-paragraph (2) substitute—

“(2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in sub-paragraph (1) shall be brought into account for the purposes of this Schedule in computing the company's profits and losses for the period to which the statement relates.

This does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.”.

- 35 After paragraph 25 of Schedule 26 to FA 2002 (debits and credits treated as relating to capital expenditure) insert—

#### *“Debits and credits recognised in equity or shareholders' funds*

- 25A Where in accordance with generally accepted accounting practice a debit or credit for a period in respect of a derivative contract of a company—  
 (a) is recognised in equity or shareholders' funds, and  
 (b) is not recognised in any of the statements mentioned in section 85B(1),

the debit or credit shall be brought into account for that period for the purposes of this Chapter in the same way as a debit or credit that, in accordance with generally accepted accounting practice, is brought into account in determining the company's profit or loss for that period.”.

- 36 In paragraphs 38(1) and (3) and 38A(1) and (3) of Schedule 26 to FA 2002, as inserted by Schedule 10 to FA 2004, for “creditor relationship” substitute “ derivative contract ”. These amendments shall be deemed always to have had effect.

- 37 In paragraph 54 of Schedule 26 to FA 2002 (derivative contracts: general interpretation), after sub-paragraph (2) (meaning of “exchange gains or losses”) insert—

“(2A) In a case where fair value accounting is used the valuation referred to in sub-paragraph (2) is the valuation that would be given by an amortised cost basis of accounting.”.

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*Schedule 29 to FA 2002*

38 (1) Paragraph 6 of Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets: reference to consolidated group accounts) is amended as follows.

(2) Omit sub-paragraph (2).

(3) After that sub-paragraph insert—

“(2A) This paragraph does not apply if the consolidated group accounts—

- (a) are drawn up using a different accounting framework from that used for the company's individual accounts, and
- (b) as a result, are prepared on a basis that, in relation to the matters mentioned in sub-paragraph (1), substantially diverges from the basis used in the company's individual accounts.”.

39 In paragraph 8(1) of Schedule 29 to FA 2002 for “a company's profit and loss account” substitute “determining a company's profit or loss”.

40 In paragraphs 9(1), 12(1), 14(1), 16(1), 17(1), 26(1)(a), 103(2) and (3)(a) of Schedule 29 to FA 2002, for “the company's profit and loss account” substitute “determining the company's profit or loss”.

41 In paragraph 13(1)(a) of Schedule 29 to FA 2002 for “the profit and loss account” substitute “determining the company's profit or loss”.

42 In paragraphs 27 and 28 of Schedule 29 to FA 2002 (intangible fixed assets: calculation of tax written down value), for sub-paragraph (3) substitute—

“(3) This paragraph has effect subject to—

paragraph 29 in the case of an asset that has been the subject of a part realisation, and

Part 13A of this Schedule in the case of an asset that has been subject to adjustment on a change of accounting policy.”.

43 In paragraph 29 of Schedule 29 to FA 2002 (intangible fixed assets: effect of part realisation), after sub-paragraph (4) insert—

“(5) On a subsequent change of accounting policy affecting the asset, the provisions of Part 13A of this Schedule apply.”.

44 In Part 7 of Schedule 29 to FA 2002 (intangible fixed assets: roll-over relief in case of realisation and reinvestment), after paragraph 42 insert—

*“References to cost of asset where asset affected by change of accounting policy*

42A (1) In the case of an asset to which Part 13A of this Schedule has applied (adjustment on change of accounting policy) the references in this Part to the cost of the asset shall be read as follows.

(2) Where paragraph 116B applied (change of accounting value) the references are unaffected.

(3) Where paragraph 116C or 116D applied (changes involving disaggregation of asset) the references to the cost of the asset shall be read as references to the appropriate proportion of that cost.

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The appropriate proportion is determined by applying to the cost of the asset the same fraction as is applied by paragraph 116C(5) or 116D(3), as the case may be, to determine the tax written down value of the asset after the change.

- (4) References in this paragraph to paragraphs 116B, 116C and 116D include references to those provisions as applied by paragraph 116E.”.

45 For paragraph 116A of Schedule 29 to FA 2002 (intangible fixed assets: adjustment on change of accounting policy) substitute—

## “PART 13A

### ADJUSTMENT ON CHANGE OF ACCOUNTING POLICY

#### Introduction

116A (1) This Part of this Schedule applies where—

- (a) there is a change of accounting policy in drawing up a company's accounts from one period of account (“the earlier period”) to the next (“the later period”), and
- (b) the approach in each of those periods accords with the law and practice applicable in relation to that period.

(2) It applies, in particular, where—

- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
- (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.

#### Change of accounting policy involving change of value

116B (1) If as a result of the change of accounting policy there is a difference between—

- (a) the accounting value of an intangible fixed asset of the company at the end of the earlier period, and
- (b) the accounting value of that asset at the beginning of the later period,

a corresponding debit or credit (as the case may be) shall be brought into account for tax purposes in the later period.

(2) Any such debit or credit is treated as arising at the beginning of the later period.

(3) The amount of the debit or credit to be brought into account for tax purposes is:

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$$\text{Accounting Difference} \times \frac{\text{Tax Value}}{\text{Accounting Value}}$$

where—

Accounting Difference is the amount of the difference specified in sub-paragraph (1);

Tax Value is the tax written down value of the asset at the end of the earlier period; and

Accounting Value is the accounting value of the asset at the end of that period.

- (4) The tax written down value of the asset at the beginning of the later period shall be taken to be the tax written down value of the asset at the end of the earlier period, reduced by the amount of the debit or (as the case may be) increased by the amount of the credit brought into account for tax purposes under sub-paragraph (3).
- (5) Subsequently—
  - (a) the cost recognised for tax purposes shall be taken to be the tax written down value given by sub-paragraph (4), together with the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes; and
  - (b) the tax written down value shall be determined taking account only of subsequent debits and credits.
- (6) This paragraph does not apply to an asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed-rate).
- (7) This paragraph has effect subject to—
  - paragraph 116F (cap on credit to be brought into account on change of accounting policy), and
  - paragraph 116G (debts or credits brought into account under other provisions).

### Change of accounting policy involving disaggregation

- 116C (1) This paragraph applies where the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period.
- (2) If there is a difference between—
  - (a) the accounting value of the original asset at the end of the earlier period, and
  - (b) the aggregate accounting value of the resulting assets at the beginning of the later period,
 a corresponding debit or credit (as the case may be) shall be brought into account for tax purposes in the later period.

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- (3) Any such debit or credit is treated as arising at the beginning of the later period.
- (4) The amount of the debit or credit to be brought into account for tax purposes is:

$$\text{Accounting Difference} \times \frac{\text{Old Tax Value}}{\text{Old Accounting Value}}$$

where—

Accounting Difference is the amount of the difference specified in sub-paragraph (2),

Old Tax Value is the tax written-down value of the original asset at the end of the earlier period, and

Old Accounting Value is the accounting value of that asset at the end of that period.

- (5) The tax written down value of each resulting asset at the beginning of the later period is given by:

$$\text{Adjusted Old Tax Value} \times \frac{\text{New Accounting Value}}{\text{Aggregate New Accounting Value}}$$

where—

Adjusted Old Tax Value is the tax written down value of the original asset at the end of the earlier period, reduced by the amount of the debit or (as the case may be) increased by the amount of the credit brought into account for tax purposes under sub-paragraph (4),

New Accounting Value is the accounting value of the asset in question at the beginning of the later period, and

Aggregate New Accounting Value is the aggregate of the accounting values of all the resulting assets at the beginning of that period.

- (6) Subsequently for each resulting asset—
  - (a) the cost recognised for tax purposes shall be taken to be the tax written down value given by sub-paragraph (5) above, together with the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes; and
  - (b) the tax written down value shall be determined taking account only of subsequent debits and credits.
- (7) This paragraph does not apply if an election under paragraph 10 (election for writing down at fixed-rate)—
  - (a) has been or is subsequently made in respect of the original asset (see paragraph 116D), or

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- (b) is subsequently made in respect of any of the resulting assets (see paragraph 116E).
- (8) This paragraph has effect subject to—
  - paragraph 116F (cap on credit to be brought into account on change of accounting policy), and
  - paragraph 116G (debits or credits brought into account under other provisions).

**Change of accounting policy involving disaggregation: original asset subject to fixed rate writing down**

- 116D (1) This paragraph applies where—
- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
  - (b) an election under paragraph 10 (election for writing down at fixed-rate) has been or is subsequently made in respect of the original asset.
- (2) That election has effect—
- (a) in relation to the original asset, for periods up to and including the earlier period, and
  - (b) in relation to each of the resulting assets, for the later period and subsequent periods.
- (3) The tax written down value of each resulting asset at the beginning of the later period is given by:

$$\text{Old Tax Value} \times \frac{\text{New Accounting Value}}{\text{Aggregate New Accounting Value}}$$

where—

Old Tax Value is the tax written down value of the original asset at the end of the earlier period,

New Accounting Value is the accounting value of the asset in question at the beginning of the later period, and

Aggregate New Accounting Value is the aggregate of the accounting values of all the resulting assets at the beginning of that period.

- (4) Subsequently for each resulting asset—
- (a) the cost recognised for tax purposes shall be taken to be the tax written down value given by sub-paragraph (3) above, together with the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes; and
  - (b) the tax written down value shall be determined taking account only of subsequent debits and credits.

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### **Change of accounting policy involving disaggregation: election for fixed rate writing down in relation to resulting asset**

116E (1) This paragraph applies where—

- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
- (b) no election under paragraph 10 (election for writing down at fixed-rate) has been or is subsequently made in respect of the original asset.

(2) An election under that paragraph may be made in respect of any of the resulting assets, provided it is made within the period during which such an election could have been made in relation to the original asset.

(3) The effect of the election is that—

- (a) the original asset is treated as if it had at all material times consisted of as many assets (“notional original assets”) as there are resulting assets,
- (b) each notional original asset is taken to be the same asset as one of the resulting assets (its “corresponding resulting asset”),
- (c) there is attributed to each notional original asset the appropriate proportion, ascertained by reference to its corresponding resulting asset (see sub-paragraph (4)), of every amount falling to be taken into account in relation to the original asset, and
- (d) the provisions of this Schedule apply in relation to each of the notional original assets and its corresponding resulting asset accordingly.

(4) The appropriate proportion in relation to each resulting asset is:

$$\frac{\text{New Accounting Value}}{\text{Aggregate New Accounting Value}}$$

where—

New Accounting Value is the accounting value of the asset at the beginning of the later period, and

Aggregate New Accounting Value is the aggregate of the accounting values of all the resulting assets at the beginning of that period.

### **Cap on credit to be brought into account on change of accounting policy**

116F (1) The amount of any credit to be brought into account for tax purposes under paragraph 116B or 116C (assets subject to writing down on accounting basis) is limited to the net aggregate amount of relevant tax debits previously brought into account.



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- (2) Where the credit is to be brought into account under paragraph 116B (change of value), the net aggregate amount of relevant tax debits previously brought into account is:

## PreviousDebits – PreviousCredits

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the asset, and

Previous Credits is the total amount of credits previously brought into account for tax purposes in respect of the asset.

- (3) Where the credit is to be brought into account under paragraph 116C (disaggregation), the net aggregate amount of relevant tax debits previously brought into account is:

## PreviousDebits – PreviousCredits

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the original asset at the end of the earlier period, and

Previous Credits is the total amount of credits previously brought into account for tax purposes in respect of that asset.

### Exclusion of debits or credits brought into account under other provisions

- 116G A debit or credit is not required to be brought into account under this Part of this Schedule to the extent that a debit or credit representing the accounting difference in question is brought into account for tax purposes under—

- (a) paragraph 12 (reversal of accounting gain),
- (b) paragraph 15 (gain on revaluation), or
- (c) paragraph 17 (reversal of accounting loss).

### Subsequent events affecting asset subject to adjustment under this Part

- 116H (1) On a further change of accounting policy affecting an intangible fixed asset in relation to which this Part of this Schedule has applied, the preceding provisions of this Part apply again.

- (2) On a subsequent part realisation affecting the asset in question, paragraph 29 applies.”.

- 46 (1) Paragraph 134 of Schedule 29 to FA 2002 (intangible fixed assets: references to amounts recognised in profit and loss account) is amended as follows.

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(2) In the paragraph heading for “*profit and loss account*” substitute “*determining profit or loss*”.

(3) Make the existing provision sub-paragraph (1).

(4) In that sub-paragraph—

- (a) in the opening words, for “a company's profit and loss account” substitute “determining a company's profit or loss” and for “include” substitute “are to”;
- (b) in sub-paragraph (a) after “recognised in” insert “the company's profit and loss account or income statement,”; and
- (c) omit the words following paragraph (b).

(5) After that sub-paragraph insert—

“(2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in sub-paragraph (1) shall be brought into account for the purposes of this Schedule in computing the company's profits and losses for the period to which the statement relates.

This does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.”.

47 In paragraph 143 of Schedule 29 to FA 2002 (intangible fixed assets: index of defined expressions) for “profit and loss account (amounts recognised in)” substitute “profit and loss (amounts recognised in determining)”.

#### *ITEPA 2003*

48 In Schedule 5 to ITEPA 2003 (enterprise management incentives), in paragraph 59 (index of defined expressions), in the entry relating to the expression “generally accepted accounting practice”, for “section 836A of ICTA” substitute “section 50(1) of the Finance Act 2004”.

#### *FA 2004*

49 In section 50 of FA 2004 (generally accepted accounting practice), for subsections (2) and (3) substitute—

“(2) In the Tax Acts “international accounting standards” has the same meaning as in Regulation (EC) No 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards.

(3) Where the European Commission has in accordance with that Regulation adopted an international accounting standard with modifications, then as regards matters covered by that standard—

- (a) generally accepted accounting practice with respect to IAS accounts shall be regarded as permitting the use of the standard either with or without the modifications, 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.”.

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- 50 In sections 50(6), 51(6), 52(3) and 54(2) of FA 2004 (periods of account in relation to which the sections have effect), omit paragraph (b) and the word “and” preceding it. This amendment shall be deemed always to have had effect.
- 51 In Part 4 of Schedule 10 to FA 2004 (amendments relating to foreign currency accounting), after paragraph 78 insert—

*“Transitional provision*

- 79 Where a company carries forward to its first period of account beginning on or after 1st January 2005 an amount by way of—
- (a) management expenses brought forward under section 75 of the Taxes Act 1988,
  - (b) losses brought forward under section 392B or 393 of that Act, or
  - (c) non-trading deficits on loan relationships brought forward under section 83 of the Finance Act 1996,
- that amount shall be translated into sterling using the London closing exchange rate for the last day of the previous period of account.”.

*Power to make certain regulations with limited retrospective effect*

- 52 (1) This paragraph applies to regulations under any of the following provisions—
- (a) section 85B of FA 1996;
  - (b) paragraph 19B of Schedule 9 to FA 1996;
  - (c) paragraph 13 or 17C of Schedule 26 to FA 2002.
- (2) Any such regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.

SCHEDULE 5

Section 87

SECTION 804ZA: PRESCRIBED SCHEMES AND ARRANGEMENTS

After Schedule 28AA to ICTA insert—

“SCHEDULE 28AB

SECTION 804ZA: PRESCRIBED SCHEMES AND ARRANGEMENTS

*Introductory*

- 1 (1) A scheme or arrangement, other than a scheme or arrangement falling within sub-paragraph (3), is a prescribed scheme or arrangement if one or more of paragraphs 2 to 6 apply to it.
- (2) A scheme or arrangement falling within sub-paragraph (3) is a prescribed scheme or arrangement if one or more of paragraphs 2 to 6 would, on the assumption in sub-paragraph (4), apply to it.

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- (3) A scheme or arrangement falls within this sub-paragraph if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by a body corporate resident in a territory outside the United Kingdom to be taken into account in the case of a person.
- (4) The assumption is that the body corporate is resident in the United Kingdom.
- (5) Nothing in sub-paragraph (4) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.

#### *Attribution of foreign tax*

- 2 This paragraph applies to a scheme or arrangement if the scheme or arrangement enables a person who is party to, or concerned in, the scheme or arrangement to pay, in respect of a source of income or chargeable gain, an amount of foreign tax all or part of which is properly attributable to another source of income or chargeable gain (or to more than one such other source).

#### *Effect of paying foreign tax*

- 3 (1) This paragraph applies to a scheme or arrangement if, under the scheme or arrangement, sub-paragraph (2) is satisfied in relation to a person who has claimed, or is in a position to claim, for a chargeable period an allowance under any arrangements by way of credit for foreign tax (“the claimant”).
- (2) This sub-paragraph is satisfied if—
  - (a) an amount of foreign tax is paid by the claimant, and
  - (b) at the time when the claimant entered into the scheme or arrangement, it could reasonably be expected that the effect of the payment of that amount of foreign tax on the foreign tax total would be to increase it by less than the amount allowable to the claimant as a credit in respect of the payment of that amount of foreign tax.
- (3) The foreign tax total is the amount found by—
  - (a) aggregating the amounts of foreign tax paid or payable in respect of the transaction or transactions forming part of the scheme or arrangement by persons party to, or concerned in, the scheme or arrangement, and
  - (b) taking into account any reliefs, deductions, reductions or allowances against or in respect of any tax that arise to the persons party to, or concerned in, the scheme or arrangement (including any reliefs, deductions, reductions or allowances arising to any one or more of those persons as a consequence of the payment by the claimant of that amount of foreign tax).

#### *Effect of claim, election or other arrangement*

- 4 (1) This paragraph applies to a scheme or arrangement if under the scheme or arrangement—
  - (a) a step is taken by a person who is party to, or concerned in, the scheme or arrangement, or
  - (b) a step that could have been taken by such a person is not taken,

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and that action or that failure to act has the effect of increasing a claim made by a person who is party to, or concerned in, the scheme or arrangement for an allowance by way of credit in accordance with this Part or of giving rise to such a claim.

- (2) The steps mentioned in sub-paragraph (1) are steps that may be made—
  - (a) under the law of any territory, or
  - (b) under arrangements made in relation to any territory.
- (3) The steps mentioned in sub-paragraph (1) include—
  - (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances;
  - (b) making elections for tax purposes.

*Effect attributable to scheme or arrangement*

- 5 (1) This paragraph applies to a scheme or arrangement if, under the scheme or arrangement, sub-paragraph (2) is satisfied in relation to a person who has claimed, or is in a position to claim, for a chargeable period an allowance under any arrangements by way of credit for foreign tax.
- (2) This sub-paragraph is satisfied if amount A is less than amount B.
- (3) Amount A is the amount of United Kingdom taxes payable by the person in respect of income and chargeable gains arising in the chargeable period.
- (4) Amount B is the amount of United Kingdom taxes that would be payable by the person in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.

*Tax deductible payments*

- 6 (1) This paragraph applies to a scheme or arrangement if the scheme or arrangement includes—
  - (a) the making by a person (“A”) of a relevant payment or payments, and
  - (b) the giving, in respect of that payment or payments, of consideration that satisfies the requirements of sub-paragraph (3).
- (2) A payment made by A is a relevant payment if all or part of it may be brought into account in computing A's income for the purposes of United Kingdom taxes.
- (3) Consideration given in respect of a payment or payments made by A satisfies the requirements of this sub-paragraph if—
  - (a) all or part of it consists of a payment or payments made to A or a person connected with A, and
  - (b) tax is chargeable in respect of the payment or payments under the law of a territory outside the United Kingdom.
- (4) In this paragraph references to a payment include references to a transfer of money's worth.
- (5) Section 839 applies for the purposes of this paragraph.”

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## SCHEDULE 6

Section 92

### CAPITAL ALLOWANCES: RENOVATION OF BUSINESS PREMISES IN DISADVANTAGED AREAS

#### PART 1

##### NEW PART 3A OF THE CAPITAL ALLOWANCES ACT 2001

1 After Part 3 of CAA 2001 insert—

#### “PART 3A

#### BUSINESS PREMISES RENOVATION ALLOWANCES

##### CHAPTER 1

##### INTRODUCTION

##### **Business premises renovation allowances**

360A) Allowances are available under this Part if a person incurs qualifying expenditure in respect of a qualifying building.

- (2) Allowances under this Part are made to the person who—
- (a) incurred the expenditure, and
  - (b) has the relevant interest in the qualifying building.

##### CHAPTER 2

##### QUALIFYING EXPENDITURE

##### **Meaning of “qualifying expenditure”**

360B) In this Part “qualifying expenditure” means capital expenditure incurred before the expiry date on, or in connection with—

- (a) the conversion of a qualifying building into qualifying business premises,
  - (b) the renovation of a qualifying building if it is or will be qualifying business premises, or
  - (c) repairs to a qualifying building or, where the qualifying building is part of a building, to the building of which the qualifying building forms part, to the extent that the repairs are incidental to expenditure within paragraph (a) or (b).
- (2) In subsection (1) “the expiry date” means—
- (a) the fifth anniversary of the day appointed under section 92 of the Finance Act 2005, or
  - (b) such later date as the Treasury may prescribe by regulations.

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- (3) Expenditure is not qualifying expenditure if it is incurred on or in connection with—
  - (a) the acquisition of land or rights in or over land,
  - (b) the extension of a qualifying building (except to the extent required for the purpose of providing a means of getting to or from qualifying business premises),
  - (c) the development of land adjoining or adjacent to a qualifying building, or
  - (d) the provision of plant and machinery, other than plant or machinery which is or becomes a fixture as defined by section 173(1).
- (4) For the purposes of this section, expenditure incurred on repairs to a building is to be treated as capital expenditure if it is not expenditure that would be allowed to be deducted in calculating the profits of a property business, or of a trade, profession or vocation, for tax purposes.
- (5) The Treasury may by regulations make further provision as to expenditure which is, or is not, qualifying expenditure.

## CHAPTER 3

### QUALIFYING BUILDINGS AND QUALIFYING BUSINESS PREMISES

#### Meaning of “qualifying building”

360(1) In this Part “qualifying building”, in relation to any conversion or renovation work, means any building or structure, or part of a building or structure, which—

- (a) is situated in an area which, on the date on which the conversion or renovation work began, was a disadvantaged area,
  - (b) was unused throughout the period of one year ending immediately before that date,
  - (c) on that date, had last been used—
    - (i) for the purposes of a trade, profession or vocation, or
    - (ii) as an office or offices (whether or not for the purposes of a trade, profession or vocation),
  - (d) on that date, had not last been used as, or as part of, a dwelling, and
  - (e) in the case of part of a building or structure, on that date had not last been occupied and used in common with any other part of the building or structure other than a part—
    - (i) as respects which the condition in paragraph (b) is met, or
    - (ii) which had last been used as a dwelling.
- (2) In this section “disadvantaged area” means—
- (a) an area designated as a disadvantaged area for the purposes of this section by regulations made by the Treasury, or
  - (b) if no regulations are made under paragraph (a), an area for the time being designated as a disadvantaged area for the purposes of Schedule 6 to the Finance Act 2003 (stamp duty land tax: disadvantaged areas relief).

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- (3) Regulations under subsection (2)(a) may—
  - (a) designate specified areas as disadvantaged areas, or
  - (b) provide for areas of a description specified in the regulations to be designated as disadvantaged areas.
- (4) If regulations under subsection (2)(a) so provide, the designation of an area as a disadvantaged area shall have effect for such period as may be specified in or determined in accordance with the regulations.
- (5) Regulations under subsection (2)(a) may—
  - (a) make different provision for different cases, and
  - (b) contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (6) Where a building or structure (or part of a building or structure) which would otherwise be a qualifying building is on the date mentioned in subsection (1)
  - (a) situated partly in a disadvantaged area and partly outside it, only so much of the expenditure incurred in accordance with section 360B as, on a just and reasonable apportionment, is attributable to the part of the building or structure located in the disadvantaged area is to be treated as qualifying expenditure.
- (7) The Treasury may by regulations make further provision as to the circumstances in which a building or structure or part of a building or structure is, or is not, a qualifying building.

### **Meaning of “qualifying business premises”**

- 360(1) In this Part “qualifying business premises” means any premises in respect of which the following requirements are met—
- (a) the premises must be a qualifying building,
  - (b) the premises must be used, or available and suitable for letting for use,—
    - (i) for the purposes of a trade, profession or vocation, or
    - (ii) as an office or offices (whether or not for the purposes of a trade, profession or vocation),
  - (c) the premises must not be used, or available for use as, or as part of, a dwelling.
- (2) In this section “premises” means any building or structure or part of a building or structure.
  - (3) For the purposes of this Part, if premises are qualifying business premises immediately before a period when they are temporarily unsuitable for use for the purposes mentioned in subsection (1)(b), they are to be treated as being qualifying business premises during that period.
  - (4) The Treasury may by regulations make further provision as to the circumstances in which premises are, or are not, qualifying business premises.



## CHAPTER 4

### THE RELEVANT INTEREST IN THE QUALIFYING BUILDING

#### General rule as to what is the relevant interest

- 360E) The relevant interest in a qualifying building in relation to any qualifying expenditure is the interest in the qualifying building to which the person who incurred the qualifying expenditure was entitled when it was incurred.
- (2) Subsection (1) is subject to the following provisions of this Chapter and to section 360Z3 (provisions applying on termination of lease).
- (3) If—
- (a) the person who incurred the qualifying expenditure was entitled to more than one interest in the qualifying building when the expenditure was incurred, and
  - (b) one of those interests was reversionary on all the others,
- the reversionary interest is the relevant interest in the qualifying building.
- (4) An interest does not cease to be the relevant interest merely because of the creation of a lease or other interest to which that interest is subject.
- (5) If—
- (a) the relevant interest is a leasehold interest, and
  - (b) that interest is extinguished on the person entitled to it acquiring the interest which is reversionary on it,
- the interest into which the leasehold interest merges becomes the relevant interest when the leasehold interest is extinguished.

#### Interest acquired on completion of conversion

- 360F For the purposes of determining the relevant interest in a qualifying building, a person who—
- (a) incurs expenditure on the conversion of a qualifying building into qualifying business premises, and
  - (b) is entitled to an interest in the qualifying building on or as a result of the completion of the conversion,
- is treated as having had that interest when the expenditure was incurred.

## CHAPTER 5

### INITIAL ALLOWANCES

#### Initial allowances

- 360G) A person who has incurred qualifying expenditure in respect of any qualifying building is entitled to an initial allowance in respect of the expenditure.

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- (2) The amount of the initial allowance is 100% of the qualifying expenditure.
- (3) A person claiming an initial allowance under this section may require the allowance to be reduced to a specified amount.
- (4) The initial allowance is made for the chargeable period in which the qualifying expenditure is incurred.

**Premises not qualifying business premises or relevant interest sold before premises first used or let**

- 360(1) No initial allowance is to be made under section 360G if, at the relevant time, the qualifying building does not constitute qualifying business premises.
- (2) An initial allowance which has been made in respect of a qualifying building which is to be qualifying business premises is to be withdrawn if—
    - (a) the qualifying building does not constitute qualifying business premises at the relevant time, or
    - (b) the person to whom the allowance was made has sold the relevant interest in the qualifying building before the relevant time.
  - (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this section.
  - (4) In this section “the relevant time” means the time when the premises are first used by the person with the relevant interest or, if they are not so used, the time when they are first suitable for letting for either of the purposes mentioned in section 360D(1)(b).

## CHAPTER 6

### WRITING-DOWN ALLOWANCES

**Entitlement to writing-down allowances**

- 360(1) A person is entitled to a writing-down allowance for a chargeable period if he has incurred qualifying expenditure in respect of a qualifying building and, at the end of the chargeable period—
- (a) the person is entitled to the relevant interest in the qualifying building,
  - (b) the person has not granted a long lease of the qualifying building out of the relevant interest in consideration of the payment of a capital sum, and
  - (c) the qualifying building constitutes qualifying business premises.
- (2) In subsection (1)(b) “long lease” means a lease the duration of which exceeds 50 years.
  - (3) Whether the duration of a lease exceeds 50 years is to be determined—
    - (a) in accordance with section 303 of ITTOIA 2005, and

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- (b) without regard to section 360Z3(3) of this Act (new lease granted as a result of the exercise of an option treated as continuation of old lease).
- (4) A person claiming a writing-down allowance may require the allowance to be reduced to a specified amount.

### **Amount of allowance**

- 360J(1) The writing-down allowance for a chargeable period is 25% of the qualifying expenditure.
- (2) The allowance is proportionately increased or reduced if the chargeable period is more or less than a year.
- (3) The amount of the writing-down allowance for a chargeable period is limited to the residue of qualifying expenditure.
- (4) For this purpose the residue is ascertained immediately before writing off the writing-down allowance at the end of the chargeable period.

### **Meaning of “the residue of qualifying expenditure”**

- 360K The residue of qualifying expenditure is the qualifying expenditure that has not yet been written off in accordance with Chapter 9.

## **CHAPTER 7**

### **GRANTS IN RESPECT OF QUALIFYING EXPENDITURE**

#### **Grants affecting entitlement to allowances**

- 360(1) No initial allowance or writing-down allowance under this Part is to be made in respect of expenditure to the extent that it is taken into account for the purposes of a relevant grant or relevant payment made towards that expenditure.
- (2) A grant or payment is relevant if it is—
  - (a) a notified State aid other than an allowance under this Part, or
  - (b) a grant or subsidy, other than a notified State aid, which the Treasury by order declares to be relevant for the purposes of the withholding of initial allowances or writing-down allowances.
- (3) For the purposes of subsection (2), “notified State aid” means a State aid notified to and approved by the European Commission.
- (4) If a relevant grant or relevant payment towards the expenditure is made after the making of an initial allowance or a writing-down allowance, the allowance is to be withdrawn to that extent.
- (5) If the amount of the relevant grant or relevant payment is repaid by the grantee to the grantor, in whole or in part, the grant or payment is treated, to that extent, as never having been made.

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- (6) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (4) or (5).
- (7) Any such assessment or adjustment is not out of time if it is made within 3 years of the end of the chargeable period in which the grant, payment or adjustment was made.

## CHAPTER 8

### BALANCING ADJUSTMENTS

#### **When balancing adjustments are made**

360M) A balancing adjustment is made if—

- (a) qualifying expenditure has been incurred in respect of a qualifying building, and
  - (b) a balancing event occurs.
- (2) A balancing adjustment is either a balancing allowance or a balancing charge and is made for the chargeable period in which the balancing event occurs.
  - (3) A balancing allowance or balancing charge is made to or on the person who incurred the qualifying expenditure.
  - (4) No balancing adjustment is made if the balancing event occurs more than 7 years after the time when the premises were first used, or suitable for letting, for either of the purposes mentioned in section 360D(1)(b).
  - (5) If more than one balancing event within section 360N occurs, a balancing adjustment is made only on the first of them.

#### **Balancing events**

360N) The following are balancing events for the purposes of this Part—

- (a) the relevant interest in the qualifying building is sold;
  - (b) a long lease of the qualifying building is granted out of the relevant interest in consideration of the payment of a capital sum;
  - (c) if the relevant interest is a lease, the lease ends otherwise than on the person entitled to it acquiring the interest reversionary on it;
  - (d) the person who incurred the qualifying expenditure dies;
  - (e) the qualifying building is demolished or destroyed;
  - (f) the qualifying building ceases to be qualifying business premises (without being demolished or destroyed).
- (2) Section 360I(2) and (3) (meaning of “long lease”) applies for the purposes of subsection (1)(b).

#### **Proceeds from balancing events**

360O) References in this Part to the proceeds from a balancing event are to the amounts received or receivable in connection with the event, as shown in the Table—

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TABLE: BALANCING EVENTS AND PROCEEDS

<b>1 Balancing Event</b>	<b>2 Proceeds from event</b>
1 The sale of the relevant interest.	The net proceeds of the sale.
2 The grant of a long lease out of the relevant interest.	If the capital sum paid in consideration of the grant is less than the commercial premium, the commercial premium. In any other case, the capital sum paid in consideration of the grant.
3 The coming to an end of a lease, where a person entitled to the lease and a person entitled to any superior interest are connected persons.	The market value of the relevant interest in the qualifying building at the time of the event.
4 The death of the person who incurred the qualifying expenditure.	The residue of qualifying expenditure immediately before the death.
5 The demolition or destruction of the qualifying building.	The net amount received for the remains of the qualifying building, together with (a) any insurance money received in respect of the demolition or destruction, and (b) any other compensation of any description so received, so far as it consists of capital sums.
6 The qualifying building ceases to be qualifying business premises.	The market value of the relevant interest in the qualifying building at the time of the event.

(2) The amounts referred to in column 2 of the Table are those received or receivable by the person who incurred the qualifying expenditure.

(3) In Item 2 of the Table “the commercial premium” means the premium that would have been given if the transaction had been at arm's length.

### Calculation of balancing adjustments

360(1) A balancing allowance is made if—

- (a) there are no proceeds from the balancing event, or
- (b) the proceeds from the balancing event are less than the residue of qualifying expenditure immediately before the event.

(2) The amount of the balancing allowance is the amount of—

- (a) the residue (if there are no proceeds);
- (b) the difference (if the proceeds are less than the residue).

(3) A balancing charge is made if the proceeds from the balancing event are more than the residue, if any, of qualifying expenditure immediately before the event.

(4) The amount of the balancing charge is the amount of—

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- (a) the difference, or
  - (b) the proceeds (if the residue is nil).
- (5) The amount of a balancing charge made on a person must not exceed the total amount of—
- (a) any initial allowances made to the person in respect of the expenditure, and
  - (b) any writing-down allowances made to the person in respect of the expenditure for chargeable periods ending on or before the date of the balancing event giving rise to the balancing adjustment.

## CHAPTER 9

### WRITING OFF QUALIFYING EXPENDITURE

#### Introduction

360Q For the purposes of this Part qualifying expenditure is written off to the extent and at the times specified in this Chapter.

#### Writing off initial allowances and writing-down allowances

- 360R(1) If an initial allowance is made in respect of the qualifying expenditure, the amount of the allowance is written off at the time when the qualifying business premises are first used, or suitable for letting for use, for either of the purposes mentioned in section 360D(1)(b).
- (2) If a writing-down allowance is made in respect of the qualifying expenditure, the amount of the allowance is written off at the end of the chargeable period for which the allowance is made.
- (3) If a balancing event occurs at the end of the chargeable period referred to in subsection (2), the amount written off under that subsection is to be taken into account in calculating the residue of qualifying expenditure immediately before the event to determine what balancing adjustment (if any) is to be made.

#### Treatment of demolition costs

- 360S(1) This section applies if—
- (a) a qualifying building is demolished, and
  - (b) the person who incurred the qualifying expenditure incurs the cost of the demolition.
- (2) The net cost of the demolition is added to the residue of qualifying expenditure immediately before the demolition.
- (3) “The net cost of the demolition” means the amount, if any, by which the cost of the demolition exceeds any money received for the remains of the qualifying building.

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- (4) If this section applies, neither the cost of the demolition nor the net cost of the demolition is treated for the purposes of any Part of this Act as expenditure on any other property replacing the qualifying building demolished.

## CHAPTER 10

### >ADDITIONAL VAT LIABILITIES AND REBATES

#### Introduction

360T For the purposes of this Chapter—

- (a) “additional VAT liability” and “additional VAT rebate” have the meanings given by section 547,
- (b) the time when—
  - (i) a person incurs an additional VAT liability, or
  - (ii) an additional VAT rebate is made to a person,is given by section 548, and
- (c) the chargeable period in which, and the time when, an additional VAT liability or an additional VAT rebate accrues are given by section 549.

#### Additional VAT liabilities and initial allowances

360U This section applies if—

- (a) a person was entitled to an initial allowance under this Part in respect of qualifying expenditure on a qualifying building,
  - (b) that person incurs an additional VAT liability in respect of that expenditure, and
  - (c) the additional VAT liability is incurred at a time when the qualifying building is, or is about to be, qualifying business premises.
- (2) If this section applies, the person entitled to the relevant interest is entitled to an initial allowance on the amount of the additional VAT liability.
- (3) The amount of the initial allowance is 100% of the amount of the additional VAT liability.
- (4) A person claiming an initial allowance under this section may require the allowance to be reduced to a specified amount.
- (5) The allowance is made for the chargeable period in which the additional VAT liability accrues.

#### Additional VAT liabilities and writing-down allowances

360V This section applies if the person entitled to the relevant interest in relation to qualifying expenditure incurs an additional VAT liability in respect of that expenditure.

- (2) If this section applies—
- (a) the additional VAT liability is treated as qualifying expenditure, and

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- (b) the amount of the residue of qualifying expenditure is accordingly increased at the time when the liability accrues by the amount of the liability.

#### **Additional VAT liabilities and writing off initial allowances**

360W If an initial allowance is made in respect of an additional VAT liability incurred after the qualifying business premises are first used or suitable for letting for business use, the amount of the allowance is written off at the time when the liability accrues.

#### **Additional VAT rebates and balancing adjustments**

360X) If an additional VAT rebate is made in respect of qualifying expenditure to the person entitled to the relevant interest in relation to that qualifying expenditure—

- (a) the making of the rebate is a balancing event for the purposes of this Part, but
  - (b) the making of balancing adjustments as a result of the event is subject to subsections (2) and (3).
- (2) No balancing allowance is to be made as a result of the event.
- (3) A balancing charge is not to be made as a result of the event unless—
- (a) the amount of the additional VAT rebate is more than the amount of the residue of qualifying expenditure immediately before the time when the rebate accrues, or
  - (b) there is no such residue.
- (4) The amount of the balancing charge is—
- (a) the amount of the difference, or
  - (b) the amount of the rebate (if there is no residue).

#### **Additional VAT rebates and writing off qualifying expenditure**

360Y If an additional VAT rebate is made in respect of qualifying expenditure, an amount equal to the rebate is written off at the time when the rebate accrues.

## **CHAPTER 11**

### **SUPPLEMENTARY PROVISIONS**

#### **Giving effect to allowances and charges: trades**

360Z) An allowance or charge to which a person is entitled or liable under this Part is to be given effect in calculating the profits of that person's trade, by treating—

- (a) the allowance as an expense of the trade, and
  - (b) the charge as a receipt of the trade.
- (2) In the case of a person who—



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- (a) is entitled to an allowance or liable to a charge in respect of a qualifying building, and
  - (b) occupies that building in the course of a profession or vocation,
- the references in subsection (1) to a trade are to be read as references to the profession or vocation.
- (3) Subsection (1) is subject to the following provisions of this Chapter.

### **Giving effect to allowances and charges: lessors and licensees**

360Z(1) This section applies if—

- (a) a person is entitled or liable to an allowance or charge under this Part for a chargeable period (“the relevant period”), but
  - (b) his interest in the building in question is or was subject to a lease or a licence at any time in that period.
- (2) If the person's interest in the building is an asset of a property business carried on by him at any time in the relevant period, the allowance or charge is to be given effect in calculating the profits of that business for the relevant period by treating—
- (a) the allowance as an expense of that business, and
  - (b) the charge as a receipt of that business.
- (3) If the person's interest in the building is not an asset of a property business carried on by him at any time in the relevant period, the allowance or charge is to be given effect by treating him as if he had been carrying on a property business in that period and as if—
- (a) the allowance were an expense of that business, and
  - (b) the charge were a receipt of that business.

### **Apportionment of sums partly referable to non-qualifying assets**

360Z(1) If the sum paid for the sale of the relevant interest in a qualifying building is attributable—

- (a) partly to assets representing expenditure for which an allowance can be made under this Part, and
  - (b) partly to assets representing other expenditure,
- only so much of the sum as on a just and reasonable apportionment is attributable to the assets referred to in paragraph (a) is to be taken into account for the purposes of this Part.
- (2) Subsection (1) applies to other proceeds from a balancing event in respect of a qualifying building as it applies to a sum given for the sale of the relevant interest in the qualifying building.
- (3) Subsection (1) does not affect any other provision of this Act requiring an apportionment of the proceeds of a balancing event.

### **Provisions applying on termination of lease**

360Z(1) This section applies for the purposes of this Part if a lease is terminated.

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- (2) If, with the consent of the lessor, the lessee of the qualifying building remains in possession of the qualifying building after the termination without a new lease being granted to him, the lease is treated as continuing so long as the lessee remains in possession.
- (3) If on the termination a new lease is granted to a lessee as a result of the exercise of an option available to him under the terms of the first lease, the second lease is treated as a continuation of the first.
- (4) If on the termination the lessor pays a sum to the lessee in respect of business premises comprised in the lease, the lease is treated as if it had come to an end by surrender in consideration of the payment.
- (5) If on the termination—
  - (a) another lease is granted to a different lessee, and
  - (b) in connection with the transaction that lessee pays a sum to the person who was the lessee under the first lease,
 the two leases are to be treated as if they were the same lease which had been assigned by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

#### **Meaning of “lease” etc.**

360Z(1) In this Part “lease” includes—

- (a) an agreement for a lease if the term to be covered by the lease has begun, and
  - (b) any tenancy,
- but does not include a mortgage (and “lessee”, “lessor” and “leasehold interest” are to be read accordingly).
- (2) In the application of this Part to Scotland—
    - (a) “leasehold interest” or “leasehold estate” means the interest of a tenant in property subject to a lease, and
    - (b) any reference to an interest which is reversionary on a leasehold interest or on a lease is to be read as a reference to the interest of the landlord in the property subject to the leasehold interest or lease.”

## **PART 2**

### **CONSEQUENTIAL AMENDMENTS**

- 2 In section 1(2) of CAA 2001 (capital allowances provided for by Act), after paragraph (b) insert—  
 “(ba) Part 3A (business premises renovation allowances)”.
- 3 In section 2(3) of CAA 2001 (provisions about giving effect to allowances and charges), after the entry in the list for sections 352 to 355 of that Act insert— “sections 360Z and 360Z1 (business premises renovation allowances)”.
- 4 In section 3 of CAA 2001 (claims for capital allowances) after subsection (2) insert—

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“(2A) Any claim for an allowance under Part 3A (business premises renovation allowances) must be separately identified as such in the return.”

5 In section 537(1) of CAA 2001 (general conditions for making contribution allowances under Parts 2 to 4 and 5), and in the section heading and the cross-heading preceding that section, for “Parts 2 to 4 and 5” substitute “ Parts 2, 3, 4 and 5 ”.

6 In section 546 of CAA 2001 (interpretation of VAT provisions), before the “and” at the end of paragraph (b) insert—

“(ba) Chapter 10 of Part 3A (business premises renovation allowances: additional VAT liabilities and rebates),”.

7 In section 567(1) of CAA 2001 (Parts of Act for purposes of which provisions about sales not at market value apply), after “3,” insert “ 3A, ”.

8 In section 570(1) of CAA 2001 (elections under section 569 of that Act: supplementary), after “Part” insert “ 3A, ”.

9 In section 570A(1) of CAA 2001 (avoidance affecting proceeds of balancing event), after “3,” insert “ , 3A ”.

10 In section 573(1) of CAA 2001 (transfers treated as sales), after “3,” insert “ 3A, ”.

11 (1) Part 2 of Schedule 1 to CAA 2001 (list of defined expressions) is amended as follows.

(2) Insert the following entries in the appropriate places—

“balancing adjustment (in Part 3A)	section 360M”
“balancing event (in Part 3A)	section 360N”
“lease and related expressions (in Part 3A)	section 360Z4”
“proceeds from a balancing event (in Part 3A)	section 360O”
“qualifying building (in Part 3A)	section 360C”
“qualifying business premises (in Part 3A)	section 360D”
“qualifying expenditure (in Part 3A)	section 360B”
“relevant interest (in Part 3A)	Chapter 4 of Part 3A”
“residue of qualifying expenditure (in Part 3A)	section 360K”

(3) In the entry for “sale, transfers under Parts 3, 4, 4A and 10 treated as”, after “3” insert “ , 3A ”.

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## SCHEDULE 7

Section 93

### TONNAGE TAX

#### PART 1

#### AMENDMENTS OF SCHEDULE 22 TO FA 2000

##### *Introduction*

1 Schedule 22 to FA 2000 shall be amended as follows.

##### *Period for which election is in force*

2 (1) Paragraph 13 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) A tonnage tax election ceases to be in force—

- (a) in the case of a company election, if a withdrawal notice in respect of the company takes effect under paragraph 15A;
- (b) in the case of a group election, if a withdrawal notice in respect of the group takes effect under that paragraph.”.

##### *Withdrawal notices*

3 After paragraph 15 (and before Part 3) insert—

##### *“Withdrawal notices*

15A (1) A withdrawal notice (see paragraph 13(2A)) may be given—

- (a) in respect of a single company, or
- (b) in respect of a group,

but only if the following conditions are met.

(2) Condition 1 is that the notice is given during the period—

- (a) beginning with the day on which the Finance Act 2005 is passed, and
- (b) ending with 31st March 2006.

(3) Condition 2 is that, for the whole of the period of three years ending with the day on which the Finance Act 2005 is passed, a tonnage tax election or a renewal election has been in force in respect of the company or group in respect of which the withdrawal notice is to be given.

(4) A withdrawal notice must be given to the Inland Revenue—

- (a) in the case of a withdrawal notice in respect of a single company, by that company;
- (b) in the case of a withdrawal notice in respect of a group, jointly by all the qualifying companies in the group.

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- (5) A withdrawal notice given in accordance with this paragraph takes effect at the end of the accounting period that precedes the first accounting period of the company to begin after 1st July 2005.
- (6) In the case of a withdrawal notice given in respect of a group, sub-paragraph (5) has effect in relation to each qualifying company in the group by reference to that company's accounting periods.

*Power to provide further opportunities for withdrawal*

- 15B (1) The Treasury may by order provide for further periods during which withdrawal notices under paragraph 15A may be given.
- (2) Any such order may provide for that paragraph to apply, with such consequential adaptations as appear to the Treasury to be appropriate, in relation to any such further period as it applies in relation to the period specified in sub-paragraph (2) of that paragraph.
  - (3) The consequential adaptations that may be made include adaptations of the reference in sub-paragraph (3) of that paragraph to the period of three years ending with the day on which the Finance Act 2005 is passed.”.

*Qualifying ships*

- 4 (1) Paragraph 19 is amended as follows.
- (2) In sub-paragraph (1) (meaning of “qualifying ship”)—
    - (a) in paragraph (a), after “carriage” insert “ by sea ”;
    - (b) in paragraph (b), after “carriage” insert “ by sea ”;
    - (c) in paragraph (c), after “assistance” insert “ carried out at sea ”;
    - (d) in paragraph (d), after “transport” insert “ by sea ”.
  - (3) In sub-paragraph (3) (other provisions to which sub-paragraph (1) is subject)—
    - (a) after “subject to” insert—
      - “(a) ”;
    - (b) at the end insert—
      - “(b) paragraph 20A (qualifying dredgers and tugs);
      - (c) paragraphs 22A to 22F (flagging).”.
  - (4) After sub-paragraph (4) insert—
    - “(5) For the purposes of sub-paragraph (1) “sea” does not include—
      - (a) a port or harbour;
      - (b) an estuary, a tidal or other river or an inland waterway.”.

*Vessels excluded from being qualifying ships*

- 5 (1) Paragraph 20 is amended as follows.
- (2) In sub-paragraph (1) (list of excluded vessels) for paragraph (f) (dredgers) substitute—
    - “(f) dredgers other than qualifying dredgers.”.

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(3) After sub-paragraph (6) insert—

- “(7) In this Schedule “qualifying dredger” means a dredger which—
- (a) is self-propelled, and
  - (b) is constructed or adapted for the carriage of cargo;
- (but see further paragraph 20A).”.

*Qualifying dredgers and tugs*

6 After paragraph 20 insert—

*“Qualifying dredgers and tugs*

- 20A(1) This paragraph applies where a company operates a ship in an accounting period and the ship—
- (a) is a qualifying dredger or a tug, and
  - (b) would, apart from this paragraph, be a qualifying ship.
- (2) The ship shall not be regarded as a qualifying ship operated by the company in that accounting period unless it is used for one or more of the activities mentioned in paragraph 19(1)(a) to (d) for more than 50% of its operational time.
- (3) In this paragraph “operational time”, in relation to a ship operated by a company in an accounting period, means the time during that accounting period during which the ship is—
- (a) operated by the company, and
  - (b) used for any activity.
- (4) For the purposes of sub-paragraph (2) assisting a self-propelled vessel into or out of a port or harbour is not to be regarded as use for an activity mentioned in paragraph 19(1)(c).
- (5) For the purposes of sub-paragraph (3) any waiting time spent by a tug for the purposes of a particular activity is to be treated as time during which the tug is used for that activity.”.

*Effect of change of use*

7 (1) Paragraph 22 is amended as follows.

- (2) In sub-paragraph (1) (qualifying ship beginning to be used as vessel of excluded kind ceases to be such ship when it begins to be so used) for “as a vessel of an excluded kind” substitute “ for non-qualifying purposes ”.
- (3) In sub-paragraph (2)(b) (use as vessel of excluded kind for up to 30 days in accounting period to be disregarded) for “as a vessel of an excluded kind” substitute “ for non-qualifying purposes ”.
- (4) In sub-paragraph (5) (meaning of references to use as vessel of excluded kind) for “as a vessel of an excluded kind are to” substitute “for non-qualifying purposes are to—

  - (a) use for an activity other than any of the activities mentioned in paragraph 19(1)(a) to (d), or

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(b)".

(5) After that sub-paragraph insert—

“(6) This paragraph does not apply for the purposes of sub-paragraphs (2) to (5) of paragraph 20A (qualifying dredgers and tugs).”.

*Flagging: rule for ships other than dredgers and tugs*

8 After paragraph 22 insert—

*“Flagging: rule for ships other than dredgers and tugs*

22A(1) This paragraph applies if the following conditions are satisfied in the case of a ship which—

- (a) is neither a qualifying dredger nor a tug, and
- (b) would, apart from this paragraph, be a qualifying ship.

(2) Condition 1 is that, at a time after the later of the reference date (see paragraph 22B(1)) and 30th June 2005,—

- (a) in the case of a tonnage tax company which is a single company, the company begins, in a financial year which is not excepted (see paragraph 22B(2)), to operate the ship for the first time, or
- (b) in the case of a tonnage tax company which is a member of a tonnage tax group, the company begins, in a financial year which is not excepted, to operate the ship for the first time, the ship not having previously been operated by any other member of the group.

(3) Condition 2 is that less than 60% of the company's total tonnage is Community-flagged (see paragraph 22B(3)) on average over the period—

- (a) beginning with the first day of the financial year mentioned in condition 1, and
- (b) ending with the day on which the company so begins to operate the ship.

(4) Condition 3 is that—

- (a) the percentage of the company's total tonnage which is Community-flagged on average over the period mentioned in condition 2, is less than
- (b) the percentage of the company's total tonnage which was Community-flagged on the reference date.

(5) Condition 4 is that, on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers (see paragraph 22B(7)).

(6) Where this paragraph applies in relation to the ship, the ship shall not, at any time on or after that date, be regarded as—

- (a) a qualifying ship operated by the company, or
- (b) if immediately before that date the company is a member of a tonnage tax group, a qualifying ship operated by any company that is or becomes a member of the group.

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- (7) But sub-paragraph (6) does not apply if—
  - (a) the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date, or
  - (b) the conditions in sub-paragraph (8) are satisfied.
- (8) Those conditions are that—
  - (a) a substitute ship which was not registered in one of the Member States' registers has, during the period mentioned in sub-paragraph (7)(a), become so registered, and
  - (b) no later than the end of that period—
    - (i) if the company is a single company, the company makes an election under this sub-paragraph in relation to the substitute ship, or
    - (ii) if the company is a member of a tonnage tax group, all the qualifying companies in the group jointly make such an election.
- (9) In sub-paragraph (8) a “substitute ship” means a qualifying ship—
  - (a) the tonnage of which is no less than that of the ship mentioned in sub-paragraph (1), and
  - (b) which was first operated by the company or, if the company is a member of a tonnage tax group, by any other member of the group more than three months before that date;

and for this purpose the tonnage of a ship is to be determined on the same basis as it is under paragraph 22B(3).
- (10) An election under sub-paragraph (8) is made by notice to the Inland Revenue.

*Flagging: meaning of terms used in paragraph 22A*

- 22B (1) In paragraph 22A “the reference date” means 17th January 2004 or, if later, —
- (a) in the case of a single company, the date of the end of the accounting period in which the company became (or becomes) a tonnage tax company;
  - (b) in the case of a member of a group, the date of the end of the accounting period in which the group became (or becomes) a tonnage tax group;
- but where the members of a group had (or have) different accounting periods at the time the group became (or becomes) a tonnage tax group, paragraph (b) has effect by reference to the first of those accounting periods.
- (2) For the purposes of sub-paragraph (2) of paragraph 22A a financial year is excepted if it is designated by an order made by the Treasury as a financial year in relation to which that paragraph is not to have effect (see further paragraph 22C(1) to (3)).
  - (3) For the purposes of paragraph 22A the percentage of a company's total tonnage which is Community-flagged is—



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$$\frac{\text{CFT}}{\text{TT}} \times 100$$

where—

CFT is the aggregate tonnage of such of the relevant ships as are registered in one of the Member States' registers, and

TT is the aggregate tonnage of all the relevant ships.

- (4) For the purposes of sub-paragraph (3) the ships which are the relevant ships are—
- (a) if the company is a single company, the ships operated by the company, or
  - (b) if the company is a member of a tonnage tax group, the ships operated by each member of the group which is a qualifying company.
- (5) Sub-paragraphs (3) and (4) are subject to any regulations made under paragraph 22C(4).
- (6) A ship shall not be counted more than once in determining for the purposes of sub-paragraph (3) the aggregate tonnage of relevant ships.
- (7) In this Schedule “Member States' registers” has the meaning given by the Annex to Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport (as from time to time amended or replaced).

*Flagging: provisions supplementing paragraphs 22A and 22B*

- 22C (1) An order under paragraph 22B(2) designating a financial year shall be made if—
- (a) the Treasury are satisfied, on the basis of the information available to them, that the percentage of the tonnage tax fleet which is Community-flagged has not decreased on average over a prescribed three year period, and
  - (b) the order is made before the beginning of that financial year.
- (2) The Treasury may make provision by regulations for or in connection with—
- (a) specifying the meaning, for the purposes of sub-paragraph (1)(a), of the percentage of the tonnage tax fleet which is Community-flagged;
  - (b) specifying the way in which an average is to be calculated for those purposes;
  - (c) requiring any tonnage tax company or tonnage tax group to provide prescribed information for the purposes of enabling the Treasury to determine whether the condition in sub-paragraph (1)(a) is met;
  - (d) imposing penalties in respect of a failure to comply with a provision of the regulations made by virtue of paragraph (c) (including, in prescribed cases or circumstances, the exclusion of a company or group from tonnage tax).

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- (3) Section 828(3) of the Taxes Act 1988 shall not apply in relation to an order under paragraph 22B(2).
- (4) The Treasury may make provision by regulations as to the way in which the percentage of a company's total tonnage which is Community-flagged is to be calculated for the purposes of paragraph 22A.
- (5) The provision that may be made by regulations under sub-paragraph (4) includes provision for or in connection with—
  - (a) determining the percentage of a company's total tonnage which is Community-flagged on average over a period;
  - (b) specifying the basis on which the tonnage of a ship is to be determined;
  - (c) treating ships which would, but for the regulations, be relevant ships for the purposes of paragraph 22B(3) as not being relevant ships for those purposes;
  - (d) including in the calculation set out in paragraph 22B(3) only such proportion of the tonnage of a relevant ship as may be prescribed.
- (6) Regulations under this paragraph—
  - (a) may make different provision for different cases or circumstances, and
  - (b) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Treasury to be necessary or expedient.
- (7) In this paragraph “prescribed” means—
  - (a) specified in, or
  - (b) determined in accordance with, regulations under this paragraph.”.

*Flagging: rules for dredgers and tugs*

9 After paragraph 22C insert—

*“Flagging: rule on first operation of qualifying dredger or tug*

22D(1) This paragraph applies if—

- (a) a company begins to operate a ship which—
    - (i) is a qualifying dredger or a tug,
    - (ii) would, apart from this paragraph, be a qualifying ship, and
    - (iii) has not previously been operated by the company or, if the company is a member of a group, by any member of the group, and
  - (b) on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers.
- (2) The ship shall not, at any time on or after that date, be regarded as—
- (a) a qualifying ship operated by the company, or

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- (b) if immediately before that date the company is a member of a group, a qualifying ship operated by any company that is or becomes a member of the group.
- (3) But sub-paragraph (2) does not apply if the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date.

*Flagging: rule on subsequent re-flagging of qualifying dredger or tug*

22E (1) This paragraph applies if—

- (a) a qualifying ship operated by a company ceases to be registered in any of the Member States' registers, and
  - (b) the ship is a qualifying dredger or a tug.
- (2) The ship shall not, at any time on or after the date on which it ceases to be so registered, be regarded as—
- (a) a qualifying ship operated by the company, or
  - (b) if immediately before that date the company is a member of a group, a qualifying ship operated by any company that is or becomes a member of the group.”.

*Flagging: restrictions where dredger or tug ceases to be qualifying ship under paragraph 22E*

10 After paragraph 22E insert—

*“Flagging: restrictions where ship ceases  
to be qualifying ship under paragraph 22E*

22F (1) This paragraph applies where a qualifying ship operated by a tonnage tax company ceases to be a qualifying ship by virtue of paragraph 22E.

- (2) No notice may be given under section 130 of the Capital Allowances Act 2001 for the postponement of all or part of a relevant allowance to which—
- (a) the company, or
  - (b) if immediately before the date on which the ship so ceases to be a qualifying ship (“the cessation date”) the company is a member of a tonnage tax group, any company that is or becomes a member of the group,
- becomes entitled on or after the cessation date.

- (3) In sub-paragraph (2) “relevant allowance” means an allowance in respect of—
- (a) qualifying expenditure on the provision of the ship, or
  - (b) qualifying expenditure which—
    - (i) is incurred on the provision of the ship, and
    - (ii) is allocated to a single ship pool.
- (4) No claim may be made under section 135 of that Act for deferment of all or part of a balancing charge—

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- (a) to which the company or, if immediately before the cessation date the company is a member of a tonnage tax group, any company that is or becomes a member of the group becomes liable, and
  - (b) which arises when there is a disposal event in respect of the ship on or after the cessation date.
- (5) Relief in respect of a relevant loss shall not be given under section 393A(1) of the Taxes Act 1988 (losses: set off against profits of the same, or an earlier, accounting period).
- (6) Group relief under Chapter 4 of Part 10 of that Act shall not be available in respect of a relevant loss.
- (7) Accordingly, relief in respect of a relevant loss shall be given only under section 393(1) of that Act (losses other than terminal losses).
- (8) In sub-paragraphs (5) to (7) “relevant loss” means a loss which is incurred in respect of the ship on or after the cessation date in the course of a trade carried on by—
  - (a) the company, or
  - (b) if immediately before the cessation date the company is a member of a tonnage tax group, any company that is or becomes a member of the group.”.

*Requirement to prove compliance with safety etc standards*

11 After paragraph 43 insert—

*“The requirement to prove compliance with safety etc standards*

- 43A(1) The Secretary of State may make provision by regulations for or in connection with requiring qualifying companies or qualifying groups to provide evidence of compliance with prescribed standards relating to—
- (a) health and safety in connection with qualifying ships which are not registered in any of the Member States' registers;
  - (b) environmental performance of such ships;
  - (c) working conditions on such ships.
- (2) The provision that may be made by regulations under this paragraph includes provision for or in connection with—
- (a) requiring returns to be made at prescribed intervals;
  - (b) authorising the Secretary of State to require persons to provide prescribed information in prescribed cases or circumstances;
  - (c) enabling audits to be carried out on behalf of the Secretary of State;
  - (d) authorising the Secretary of State to issue certificates of non-compliance in prescribed cases or circumstances;
  - (e) the effect of such a certificate (including preventing the making of a renewal election when such a certificate is in force);
  - (f) enabling persons to apply to the Secretary of State for the cancellation of such a certificate;
  - (g) requiring or enabling the Secretary of State to revoke a tonnage tax election after a prescribed period of non-compliance;

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- (h) the making of appeals;
  - (i) authorising the disclosure of information between the Secretary of State and the Inland Revenue.
- (3) Regulations under this paragraph may create criminal offences in respect of failures to comply with requirements imposed by the regulations.
- (4) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Regulations under this paragraph—
  - (a) may make different provision for different cases, and
  - (b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (6) In this paragraph “prescribed” means prescribed by regulations under this paragraph.”.

*The ring fence: capital allowances: general: introduction*

- 12 (1) Paragraph 68 is amended as follows.
- (2) In sub-paragraph (2) (description of general scheme of Part 9 of Schedule 22) for paragraph (c) substitute—
- “(c) on leaving tonnage tax—
- (i) a company is treated as having incurred qualifying expenditure on its tonnage tax plant and machinery assets of an amount equal to the lower of cost and market value, where it leaves tonnage tax on expiry of an election or on the taking effect of a withdrawal notice, but
  - (ii) otherwise, a company is put broadly in the position it would have been in if it had never been subject to tonnage tax.”.

*The ring fence: capital allowances: exit: plant and machinery*

- 13 (1) Paragraph 85 is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1C) applies where the company leaves tonnage tax—
- (a) on the expiry of a tonnage tax election, or
  - (b) on a tonnage tax election ceasing to be in force under paragraph 13(2A) (taking effect of withdrawal notice under paragraph 15A).
- (1B) In any other case, sub-paragraph (2) applies.
- (1C) Where this sub-paragraph applies, the amount of qualifying expenditure in respect of each asset used by the company for the purposes of its tonnage tax activities and held by the company when it leaves tonnage tax shall be taken to be—
- (a) the market value of the asset at the time the company leaves tonnage tax, or

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- (b) if less, the amount of expenditure incurred on the provision of the asset that would have been qualifying expenditure if the company had not been subject to tonnage tax.”.
- (3) In sub-paragraph (2) (amount of qualifying expenditure to be determined by reference to tax written down value of assets) at the beginning insert “ Where this sub-paragraph applies, ”.

*The ring fence: capital allowances: ship leasing: sale and lease-back arrangements*

- 14 (1) Paragraph 92 is amended as follows.
- (2) In sub-paragraph (2) (meaning of “sale and lease-back arrangements”) for “subject to sub-paragraph (3)” substitute “ subject to sub-paragraphs (3) and (3A) ”.
  - (3) After sub-paragraph (3) insert—
    - “(3A) This paragraph does not apply if—
      - (a) expenditure is incurred on enhancing the ship or on converting it to another use,
      - (b) the amount of that expenditure—
        - (i) is greater than 33% of the market value of the ship immediately after completion of the enhancement or conversion, and
        - (ii) is equal to or greater than the market value of the interest in the ship which is the subject of the transaction mentioned in Step Two in sub-paragraph (2), and
      - (c) that transaction is effected not more than four months after the first occasion following completion of the enhancement or conversion on which the ship is brought into use by any person for any purpose.”.

*Meaning of “offshore activities”*

- 15 (1) Paragraph 104 is amended as follows.
- (2) After sub-paragraph (1) (meaning of “offshore activities”) insert—
    - “(1A) But none of the following activities is to be regarded as an offshore activity—
      - (a) offshore supply services;
      - (b) towage, salvage or other marine assistance;
      - (c) anchor handling;
      - (d) carriage of liquids or gases;
      - (e) safety or rescue services;
      - (f) the carriage of cargo in connection with dredging.
    - (1B) The Treasury may make provision by order amending sub-paragraph (1A) by—
      - (a) adding, or
      - (b) varying,
 any description of activity.”.

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*Vessels to which the special rules for offshore activities do not apply*

16 Omit paragraph 105.

*Index of defined expressions*

17 (1) Paragraph 147 is amended as follows.

(2) Insert each of the following at the appropriate place—

“qualifying dredger	paragraph 20(7)”;
“Member States' registers	paragraph 22B(7)”.

**PART 2**

COMMENCEMENT AND TRANSITIONAL PROVISION

*Commencement*

18 (1) Subject to paragraphs 19 to 21, paragraphs 4 to 6, 8 to 10 and 15 to 17 (and paragraph 1 so far as relating to those paragraphs) shall come into force on 1st July 2005.

(2) This Part of this Schedule, and the other provisions of Part 1 of this Schedule, shall come into force on the day on which this Act is passed.

*Transitional provision: qualifying activities*

19 (1) If a withdrawal notice is given on or before 31st March 2006 under paragraph 15A of Schedule 22 to FA 2000 in respect of a single company or a group, the amendments made by—

- (a) paragraph 4, and
- (b) so far as relating to tugs, paragraph 6,

shall not have effect in relation to that company or group until the day on which the relevant accounting period begins.

(2) In sub-paragraph (1) “the relevant accounting period” means the first accounting period of the company to begin after 1st July 2005.

(3) In the case of a withdrawal notice given in respect of a group, this paragraph has effect in relation to each qualifying company in the group by reference to that company's accounting periods.

*Transitional provision: flagging: order designating financial year 2005*

20 In relation to the financial year 2005, Schedule 22 to FA 2000 shall have effect with the omission of paragraph 22C(1).

*Transitional provision: flagging*

21 Where a company (whether or not a member of a group) has operated a qualifying dredger or a tug at any time before 1st July 2005, the company is to be treated, for

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the purposes of paragraph 22D of Schedule 22 to FA 2000, as not having operated the qualifying dredger or tug before that date.

## SCHEDULE 8

Section 94

### STAMP DUTY LAND TAX: ALTERNATIVE PROPERTY FINANCE

#### *Introduction*

1 Part 4 of FA 2003 is amended in accordance with this Schedule.

*Alternative property finance: England and Wales and Northern Ireland*

2 After section 71 insert—

**“71A Alternative property finance: land sold to financial institution and leased to individual**

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which—
  - (a) the institution purchases a major interest in land or an undivided share of a major interest in land (“the first transaction”),
  - (b) where the interest purchased is an undivided share, the major interest is held on trust for the institution and the individual as beneficial tenants in common,
  - (c) the institution (or the person holding the land on trust as mentioned in paragraph (b)) grants to the individual out of the major interest a lease (if the major interest is freehold) or a sub-lease (if the major interest is leasehold) (“the second transaction”), and
  - (d) the institution and the individual enter into an agreement under which the individual has a right to require the institution or its successor in title to transfer to the individual (in one transaction or a series of transactions) the whole interest purchased by the institution under the first transaction.
- (2) The first transaction is exempt from charge if the vendor is—
  - (a) the individual, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.
- (3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).
- (4) Any transfer to the individual that results from the exercise of the right mentioned in subsection (1)(d) (“a further transaction”) is exempt from charge if—
  - (a) the provisions of this Part relating to the first and second transactions are complied with, and



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- (b) at all times between the second transaction and the further transaction—
  - (i) the interest purchased under the first transaction is held by a financial institution so far as not transferred by a previous further transaction, and
  - (ii) the lease or sub-lease granted under the second transaction is held by the individual.
- (5) The agreement mentioned in subsection (1)(d) is not to be treated—
  - (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 44(5) does not apply), or
  - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if—
  - (a) the individual enters into the arrangement, or holds the lease or sub-lease, as trustee and any beneficiary of the trust is not an individual, or
  - (b) the individual enters into the arrangements, or holds the lease or sub-lease, as partner and any of the other partners is not an individual.
- (7) A further transaction that is exempt from charge by virtue of subsection (4) is not a notifiable transaction unless the transaction involves the transfer to the individual of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.
- (8) In this section “financial institution” means—
  - (a) a bank within the meaning of section 840A of the Taxes Act 1988,
  - (b) a building society within the meaning of the Building Societies Act 1986, or
  - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b).

For the purposes of paragraph (c) a company is a wholly-owned subsidiary of a bank or building society if it has no members except the parent and the parent's wholly-owned subsidiaries or persons acting on behalf of the parent or the parent's wholly-owned subsidiaries.
- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.
- (10) This section does not apply in relation to land in Scotland.”

*Alternative property finance: Scotland*

- 3 (1) Section 72 (alternative property finance: land sold to financial institution and leased to individual) is amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (b)—
    - (i) for “freehold” substitute “ the interest of the owner ”, and

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(ii) for “leasehold” substitute “ the tenant's right over or interest in a property subject to a lease ”; and

(b) in paragraph (c), omit “or its successor in title”.

(3) For subsection (7) substitute—

“(7) In this section “financial institution” has the same meaning as in section 71A.”

(4) Omit subsection (8).

(5) After subsection (9) insert—

“(10) This section applies only in relation to land in Scotland.”

(6) In the heading, after “finance” insert “ in Scotland ”.

4 After section 72 insert—

**“72A Alternative property finance in Scotland: land sold to financial institution and individual in common**

(1) This section applies where arrangements are entered into between an individual and a financial institution under which—

- (a) the institution and the individual purchase a major interest in land as owners in common (“the first transaction”),
- (b) the institution and the individual enter into an agreement under which the individual has a right to occupy the land exclusively (“the second transaction”), and
- (c) the institution and the individual enter into an agreement under which the individual has a right to require the institution to transfer to the individual (in one transaction or a series of transactions) the whole interest purchased under the first transaction.

(2) The first transaction is exempt from charge if the vendor is—

- (a) the individual, or
- (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.

(3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).

(4) Any transfer to the individual that results from the exercise of the right mentioned in subsection (1)(c) (“a further transaction”) is exempt from charge if—

- (a) the provisions of this Part relating to the first transaction are complied with, and
- (b) at all times between the first and the further transaction—
  - (i) the interest purchased under the first transaction is held by a financial institution and the individual as owners in common, and

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- (ii) the land is occupied by the individual under the agreement mentioned in subsection (1)(b).
- (5) The agreement mentioned in subsection (1)(c) is not to be treated—
  - (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 44(5) does not apply), or
  - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if the individual enters into the arrangements, or occupies the land, as partner and any of the other partners is not an individual.
- (7) A further transaction that is exempt from charge by virtue of subsection (4) is not a notifiable transaction unless the transaction involves the transfer to the individual of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.
- (8) In this section “financial institution” has the same meaning as in section 71A.
- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.
- (10) This section applies only in relation to land in Scotland.”

#### *Consequential amendments*

- 5 (1) Section 73 (alternative property finance: land sold to individual and re-sold to individual) is amended as follows.
  - (2) In subsection (2)(b), for “section 72(1)” substitute “ section 71A(1), 72(1) or 72A(1) ”.
  - (3) In subsection (5)(a), for “section 72” substitute “ section 71A ”.
- 6 In section 122 (index of defined expressions), in the entry for “notifiable (in relation to a land transaction)” at the end insert “ (see too sections 71A(7) and 72A(7)) ”.

#### *Commencement*

- 7 (1) Paragraphs 2 and 3, and paragraphs 5 and 6 so far as relating to section 71A of FA 2003, have effect in any case where the effective date of the first transaction, within the meaning of section 71A of FA 2003 (as inserted by paragraph 2), falls on or after the day on which this Act is passed.
- (2) Paragraph 4, and paragraphs 5 and 6 so far as relating to section 72A of FA 2003, have effect in any case where the effective date of the first transaction, within the meaning of section 72A of FA 2003 (as inserted by paragraph 4), falls on or after the day on which this Act is passed.
- (3) In this paragraph “the effective date” has the same meaning as in Part 4 of FA 2003.

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## SCHEDULE 9

Section 96

### STAMP DUTY LAND TAX AND STAMP DUTY: REMOVAL OF DISADVANTAGED AREAS RELIEF FOR NON-RESIDENTIAL PROPERTY

#### *Stamp duty land tax*

- 1 (1) Schedule 6 to FA 2003 (disadvantaged areas relief) is amended as follows.
  - (2) In paragraph 3 (land wholly situated in a disadvantaged area: introduction), after “if” insert “(a)” and at the end insert “, and
    - (b) the land is wholly or partly residential property”.
  - (3) Omit paragraph 4 (land wholly situated in a disadvantaged area: exemption from charge where land all non-residential).
  - (4) In paragraph 6 (land wholly situated in a disadvantaged area: cases where land partly non-residential and partly residential)—
    - (a) for the first sentence of sub-paragraph (1) substitute— “ This paragraph applies, where the land is partly non-residential property and partly residential property, in relation to the consideration attributable to land that is residential property. ”;
    - (b) in the second sentence of that sub-paragraph omit “land that is non-residential property or”;
    - (c) omit sub-paragraphs (2) and (3).
  - (5) In paragraph 7 (land partly situated in a disadvantaged area: introduction), in sub-paragraph (1) after “if” insert “(a)” and at the end of that sub-paragraph insert “, and
    - (b) the land situated in a disadvantaged area is wholly or partly residential property”.
  - (6) Omit paragraph 8 (land partly situated in a disadvantaged area: exemption from charge for part so situated if all non-residential).
  - (7) In paragraph 10 (land partly situated in a disadvantaged area: cases where part so situated is partly non-residential and partly residential)—
    - (a) for the first sentence of sub-paragraph (1) substitute— “ This paragraph applies, where the land situated in a disadvantaged area is partly non-residential property and partly residential property, in relation to the consideration attributable to land that is residential property. ”;
    - (b) in the second sentence of that sub-paragraph omit “land that is non-residential property or”;
    - (c) omit sub-paragraphs (2) and (3).

#### *Stamp duty*

- 2 (1) The Stamp Duty (Disadvantaged Areas) (Application of Exemptions) Regulations 2003 (S.I. 2003/1056) are amended as follows.
  - (2) After regulation 2 insert—

**Disapplication of exemptions conferred by section 92 or by Schedule 30 where all of land is non-residential property**

“2A An exemption conferred by section 92 or by Schedule 30 shall not apply where none of the land in question is residential property.”.

- (3) In regulation 5 (application of exemptions conferred by section 92 or by Schedule 30 where land only partly residential property), after paragraph (3) insert—

“(3A) An exemption conferred by section 92 or by Schedule 30 shall not apply in relation to any duty chargeable in respect of relevant consideration, or the rate or average rate of rent, attributed to the land in question to the extent that it is not residential property.”.

- 3 The insertion by paragraph 2 of provisions into the Stamp Duty (Disadvantaged Areas) (Application of Exemptions) Regulations 2003 is without prejudice to the power to amend or revoke those provisions by further regulations under section 92A of FA 2001.

*Commencement and transitional provisions*

- 4 (1) Subject to sub-paragraph (2), paragraph 1 applies in relation to any transaction of which the effective date is after 16th March 2005.

- (2) That paragraph does not apply—

- (a) in relation to any transaction that is effected in pursuance of a contract entered into and substantially performed on or before 16th March 2005, or
- (b) (subject to sub-paragraph (3)) in relation to any other transaction that is effected in pursuance of a contract entered into on or before that date.

- (3) The exclusion by sub-paragraph (2)(b) of transactions effected in pursuance of contracts entered into on or before 16th March 2005 does not apply—

- (a) if there is any variation of the contract or assignment of rights under the contract after that date,
- (b) if the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
- (c) if after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.

- (4) In this paragraph “effective date” and “substantially performed” have the same meaning as in Part 4 of FA 2003.

- 5 (1) Subject to sub-paragraph (2), paragraph 2 applies in relation to instruments executed after 16th March 2005.

- (2) That paragraph does not apply in relation to an instrument giving effect to a contract entered into on or before 16th March 2005, unless—

- (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
- (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

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## SCHEDULE 10

Section 101

### PENSION SCHEMES ETC.

#### *Introduction*

- 1 Part 4 of FA 2004 (pension schemes etc.) is amended in accordance with paragraphs 2 to 58.

#### **Commencement Information**

- I1** Sch. 10 para. 1 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Deferred annuities*

- 2 In section 153(8) (deferred annuity contract to be registered pension scheme), after “contract” insert “ made with an insurance company ”.

#### **Commencement Information**

- I2** Sch. 10 para. 2 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Orders for return of unauthorised payments*

- 3 In section 153 (registration of pension schemes), after subsection (8) insert—
- “(8A) Where an order has been made under section 19(4) or 21(2)(a) of the Pensions Act 2004 or Article 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (restitution by order of court or Pensions Regulator) that property or money be transferred, or a sum be paid, towards an annuity contract made with an insurance company, the annuity contract is to be treated as having become a registered pension scheme on the day on which it is made.”

#### **Commencement Information**

- I3** Sch. 10 para. 3 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 4 After section 266 insert—

*“Relief from liability in respect of returned unauthorised member payments*

#### **266A Member's liability**

- (1) This section applies where—

- (a) a liability to the unauthorised payments charge, or to both the unauthorised payments charge and the unauthorised payments surcharge, has arisen in respect of an unauthorised member payment, and

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- (b) property or money is transferred, or a sum paid, towards a registered pension scheme pursuant to an order under section 19(4) or 21(2)(a) of the Pensions Act 2004 or Article 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (restitution by order of court or Pensions Regulator) as a result of the unauthorised member payment.
- (2) The member of the registered pension scheme to or in respect of whom the unauthorised member payment was made (or, if it was paid after his death, the recipient) may claim relief from—
  - (a) the relevant proportion of the unauthorised payments charge, and
  - (b) if a liability to the unauthorised payments surcharge has arisen and subsection (4) is satisfied, the relevant proportion of the unauthorised payments surcharge.
- (3) The claim must be made within the period of one year beginning with the day on which the property or money is transferred, or the sum paid.
- (4) This subsection is satisfied if no part of the unauthorised member payment and no asset or sum representing it—
  - (a) has been received by (or on behalf of) the member or a person connected with the member, or
  - (b) has been held for more than 180 days by a person or succession of persons, other than the member or a person connected with the member, involved in any transaction by which the unauthorised member payment was made.
- (5) The relevant proportion of the unauthorised payments charge or the unauthorised payments surcharge is—

$$\frac{\text{ASO}}{\text{UMP}}$$

where—

ASO is the amount subject to the order, that is the aggregate of the market value of any property and the amount of any money transferred, or the amount of the sum paid, towards a registered pension scheme pursuant to the order under section 19(4) or 21(2)(a) of the Pensions Act 2004 or Article 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 in respect of the unauthorised member payment, and

UMP is the amount of the unauthorised member payment.

- (6) But if ASO is greater than UMP, the relevant proportion of the unauthorised payments charge or the unauthorised payments surcharge is the whole of it.
- (7) Section 839 of ICTA (connected persons) applies for the purposes of this section.

## 266B Scheme's liability

- (1) This section applies where—

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- (a) the scheme administrator of a registered pension scheme has become liable to the scheme sanction charge in respect of an unauthorised member payment, and
  - (b) property or money is transferred, or a sum paid, towards a registered pension scheme pursuant to an order under section 19(4) or 21(2)(a) of the Pensions Act 2004 or Article 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (restitution by order of court or Pensions Regulator) as a result of the unauthorised member payment.
- (2) The scheme administrator may, within the period of one year beginning with the day on which the property or money is transferred, or the sum paid, claim relief from the relevant proportion of the scheme sanction charge.
- (3) The relevant proportion of the scheme sanction charge is—

$$\frac{\text{ASO}}{\text{UMP}}$$

where—

ASO is the amount subject to the order, that is the aggregate of the market value of any property and the amount of any money transferred, or the amount of the sum paid, towards a registered pension scheme pursuant to the order under section 19(4) or 21(2)(a) of the Pensions Act 2004 or Article 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 in respect of the unauthorised member payment, and

UMP is the amount of the unauthorised member payment.

- (4) But if ASO is greater than UMP, the relevant proportion of the scheme sanction charge is the whole of it.”

#### **Commencement Information**

**I4** Sch. 10 para. 4 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Unauthorised member payments*

- 5 In section 161(5) (payment made to person who is connected with member, or was connected with member at his death, to be treated as made in respect of member), after “scheme to” insert “ or in respect of ”.

#### **Commencement Information**

**I5** Sch. 10 para. 5 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Unauthorised payments: loans to person connected with member or sponsoring employer*

- 6 (1) Section 162 (meaning of “loan”) is amended as follows.



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- (2) In subsection (3) (guarantee of loan to or in respect of member or sponsoring employer to be treated as loan), after “scheme” insert “, or to or in respect of a person who is connected with a member or sponsoring employer of a registered pension scheme but is not a member or sponsoring employer of the pension scheme,”.
- (3) In subsection (4) (debt of member or sponsoring employer not required to be repaid at normal time to be treated as loan), after “registered pension scheme” insert “ or a person who is connected with a member or sponsoring employer of a registered pension scheme but is not a member or sponsoring employer of the pension scheme”.
- (4) After subsection (5) insert—
- “(6) Section 839 of ICTA (connected persons) applies for the purposes of this section.”

**Commencement Information**

**I6** Sch. 10 para. 6 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Abatement of public service pensions*

- 7 In section 165(3) (when a person becomes entitled to a pension), insert at the end (not as part of paragraph (b)) “ and, for this purpose, the abatement of a scheme pension under a public service pension scheme is not to be taken to affect the right to receive it. ”

**Commencement Information**

**I7** Sch. 10 para. 7 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 8 (1) Schedule 32 (benefit crystallisation events: supplementary) is amended as follows.
- (2) In paragraph 9 (benefit crystallisation event 2: meaning of “P”), after sub-paragraph (1) insert—
- “(1A) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining the amount of the pension which will be payable for the purposes of sub-paragraph (1).”
- (3) After that paragraph insert—

*“Benefit crystallisation event 3: disregarding abatement*

- 9A For the purposes of benefit crystallisation event 3, any abatement of the scheme pension is to be left out of account in determining for the purposes of column 1—
- (a) the increased annual rate of the pension, and
- (b) the rate at which it was payable on the day on which the individual became entitled to it.”
- (4) In paragraph 11 (benefit crystallisation event 3: permitted margin in case of post-5th April 2006 pension), after sub-paragraph (7) insert—

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“(8) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining for the purposes of this paragraph the annual amount of the pension at the rate at which it was payable on the day on which the individual became entitled to it.”

(5) In paragraph 12 (benefit crystallisation event 3: permitted margin in case of pre-5th April 2006 pension), after sub-paragraph (3) insert—

“(4) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining for the purposes of this paragraph the annual amount of the pension at the rate at which it was payable on the day on which the individual became entitled to it.”

(6) In paragraph 13 (benefit crystallisation event 3: meaning of “XP”), after sub-paragraph (2) insert—

“(3) If the pension is under a public service pension scheme, any abatement of the pension is to be left out of account in determining for the purposes of sub-paragraph (1)—

- (a) the increased annual rate of the pension, and
- (b) the rate at which it was payable on the day on which the individual became entitled to it.”

#### **Commencement Information**

**I8** Sch. 10 para. 8 in force at 6.4.2006, see Sch. 10 para. 64(1)

9 In section 279(1) (definitions), before the definition of “the Board of Inland Revenue” insert—

““abatement”, in relation to a scheme pension under a public service pension scheme, means the reduction of the pension (including its reduction to nil) in accordance with the rules of the pension scheme by reason of re-employment in public service,”.

#### **Commencement Information**

**I9** Sch. 10 para. 9 in force at 6.4.2006, see Sch. 10 para. 64(1)

10 In the table in section 280(2) (index of defined expressions), insert at the appropriate place—

“abatement	section 279(1)”. ”.
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#### **Commencement Information**

**I10** Sch. 10 para. 10 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Scheme pensions*

11 (1) Paragraph 2 of Schedule 28 (scheme pensions) is amended as follows.

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- (2) Omit sub-paragraph (1) (special provisions for pension scheme with fewer than 50 members).
- (3) In sub-paragraph (2) (pension scheme with 50 or more members), for “In the case of a pension scheme with 50 or more members, a” substitute “ A ”.
- (4) In sub-paragraph (3)(b) (no reduction in rate of pension)—
  - (a) for “in respect of any” substitute “ at any time during any ”, and
  - (b) for “in respect of the previous 12 month period” substitute “ at the relevant time ”.
- (5) After that sub-paragraph insert—
  - “(3A) “The relevant time” is—
    - (a) in the case of the first relevant 12 month period, the day on which the member becomes entitled to the pension, and
    - (b) in the case of any other relevant 12 month period, immediately before the beginning of that period.”
- (6) In sub-paragraph (4) (things not preventing condition in sub-paragraph (3) being satisfied), omit “or” at the end of paragraph (b) and insert at the end—
  - “(d) the reduction of the pension in consequence of a pension sharing order or provision,
  - (e) forfeiture of entitlement to the pension in circumstances prescribed by regulations made by the Board of Inland Revenue,
  - (f) the reduction of the pension in consequence of an order of a court,
  - (g) if the pension is under a public service pension scheme, its reduction by abatement, or
  - (h) the reduction of the pension in any other circumstances prescribed by regulations made by the Board of Inland Revenue.”
- (7) After that sub-paragraph insert—
  - “(4A) In sub-paragraph (4) references to the reduction of a pension include its ceasing to be payable (whether temporarily or permanently).”
- (8) After sub-paragraph (6) insert—
  - “(6A) The Board of Inland Revenue may by regulations provide that if—
    - (a) a scheme pension payable by an insurance company selected by the scheme administrator of a registered pension scheme (“the original scheme pension”) ceases to be payable, and
    - (b) in consequence of the transfer of sums or assets (or both) from the insurance company to another insurance company in connection with the original scheme pension ceasing to be payable, another scheme pension becomes payable by the other insurance company (“the new scheme pension”),the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.”
- (9) Insert at the end—

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“(8) Regulations under sub-paragraph (4)(e) and (h) may include provision having effect in relation to times before they are made.”

#### Commencement Information

**I11** Sch. 10 para. 11 in force at 6.4.2006, see Sch. 10 para. 64(1)

12 In Schedule 28 (authorised pensions), after paragraph 2 insert—

- “2A (1) Where this paragraph applies in relation to a pension payable to the member, the pension scheme is to be treated as making an unauthorised payment to the member of the appropriate amount.
- (2) This paragraph applies to a pension if it fails to satisfy the condition in sub-paragraph (3) of paragraph 2—
- (a) by reason of not complying with paragraph (a) of that sub-paragraph, or
  - (b) by reason of not complying with paragraph (b) of that sub-paragraph because a substantial reduction occurs in the rate of the pension,
- or if it is a pension the rate of which is reduced in accordance with paragraph (b) of sub-paragraph (4) of paragraph 2 but the reduction is part of avoidance arrangements.
- (3) For the purposes of sub-paragraph (2)(b) a substantial reduction occurs in the rate of a pension if the rate at which the pension is payable at any time during any relevant 12 month period (within the meaning of paragraph 2(7)) is less than 80% of the rate payable when the member became entitled to the pension.
- (4) For the purposes of sub-paragraph (2) “avoidance arrangements” includes schemes, arrangements and understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to increase the member's entitlement to a lump sum on which there is no liability to income tax.
- (5) “The appropriate amount”, in relation to the pension, is the amount of any lump sum on which there is no liability to tax to which the member became entitled in connection with the pension.
- (6) Once this paragraph has applied in relation to the pension, it does not apply in relation to it again.
- (7) The application of this paragraph in relation to the pension does not prevent any payments of the pension themselves being unauthorised member payments.”

#### Commencement Information

**I12** Sch. 10 para. 12 in force at 6.4.2006, see Sch. 10 para. 64(1)

**Status:** Point in time view as at 19/07/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

### *Annuities*

- 13 (1) Paragraph 3 of Schedule 28 (lifetime annuity) is amended as follows.
- (2) For sub-paragraph (1)(d) (lifetime annuity to be level annuity, increasing annuity or relevant linked annuity) substitute—
- “(d) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.”
- (3) After sub-paragraph (2) insert—
- “(2A) An annuity does not fail to satisfy sub-paragraph (1)(d) by reason of the operation of a pension sharing order or provision.
- (2B) The Board of Inland Revenue may by regulations make provision in relation to cases in which a lifetime annuity payable by an insurance company (“the original lifetime annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another lifetime annuity (a “new lifetime annuity”) or a scheme pension, short-term annuity, dependants' scheme pension, dependants' annuity or dependants' short-term annuity by the other insurance company, or
- (b) sums or assets are transferred to the relevant registered pension scheme.
- (2C) The regulations may provide that—
- (a) in a case where a new lifetime annuity becomes payable, the new lifetime annuity is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original lifetime annuity, and
- (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment to the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.
- (2D) For the purposes of sub-paragraphs (2B) and (2C) a registered pension scheme is the relevant registered pension scheme if the original lifetime annuity was acquired using sums or assets held for the purposes of the pension scheme.”
- (4) Omit sub-paragraphs (3) to (6) (which define level annuity, increasing annuity and relevant linked annuity).

#### **Commencement Information**

**I13** Sch. 10 para. 13 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 14 (1) Paragraph 6 of Schedule 28 (short-term annuity) is amended as follows.
- (2) In sub-paragraph (1) (meaning of “short-term annuity”), for “An” substitute “ For the purposes of this Part an ”.

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- (3) For paragraph (e) of that sub-paragraph (short-term annuity to be level annuity, increasing annuity or relevant linked annuity) substitute—
- “(e) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.”
- (4) After that sub-paragraph insert—
- “(1A) An annuity does not fail to satisfy sub-paragraph (1)(e) by reason of the operation of a pension sharing order or provision.
- (1B) The Board of Inland Revenue may by regulations make provision in relation to cases in which a short-term annuity payable by an insurance company (“the original short-term annuity”) ceases to be payable and in consequence of that—
- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another short-term annuity (a “new short-term annuity”) or a scheme pension, lifetime annuity, dependants' scheme pension, dependants' annuity or dependants' short-term annuity by the other insurance company, or
- (b) sums or assets are transferred to the relevant registered pension scheme.
- (1C) The regulations may provide that—
- (a) in a case where a new short-term annuity becomes payable, the new short-term annuity is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original short-term annuity, and
- (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment to the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.
- (1D) For the purposes of sub-paragraphs (1B) and (1C) a registered pension scheme is the relevant registered pension scheme if the original short-term annuity was acquired using sums or assets held for the purposes of the pension scheme.”
- (5) Omit sub-paragraph (2) (which defines level annuity, increasing annuity and relevant linked annuity).

#### **Commencement Information**

**I14** Sch. 10 para. 14 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 15 (1) Paragraph 17 of Schedule 28 (dependants' annuity) is amended as follows.
- (2) In sub-paragraph (1) (meaning of “dependants' annuity”), for “An” substitute “ For the purposes of this Part an ”.
- (3) For paragraph (c) of that sub-paragraph (dependants' annuity to be level annuity, increasing annuity or relevant linked annuity) substitute—

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- “(c) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.”.
- (4) For sub-paragraph (2) (which defines level annuity, increasing annuity and relevant linked annuity) substitute—
  - “(2) An annuity does not fail to satisfy sub-paragraph (1)(c) by reason of the operation of a pension sharing order or provision.
  - (3) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' annuity payable to a person (“the original dependants' annuity”) ceases to be payable and in consequence of that—
    - (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' annuity (a “new dependants' annuity”) or a scheme pension, lifetime annuity, short-term annuity, dependants' scheme pension or dependants' short-term annuity by the other insurance company, or
    - (b) sums or assets are transferred to the relevant registered pension scheme.
  - (4) The regulations may provide that—
    - (a) in a case where a new dependants' annuity becomes payable, the new dependants' annuity is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' annuity, and
    - (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.
  - (5) For the purposes of sub-paragraphs (3) and (4) a registered pension scheme is the relevant registered pension scheme if the original dependants' annuity was acquired using sums or assets held for the purposes of the pension scheme.”

#### Commencement Information

**I15** Sch. 10 para. 15 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 16 (1) Paragraph 20 of Schedule 28 (dependants' short-term annuity) is amended as follows.
- (2) In sub-paragraph (1) (meaning of “dependants' short-term annuity”), for “An” substitute “ For the purposes of this Part an ”.
  - (3) For paragraph (e) of that sub-paragraph (dependants' short-term annuity to be level annuity, increasing annuity or relevant linked annuity) substitute—
    - “(e) its amount either cannot decrease or falls to be determined in any manner prescribed by regulations made by the Board of Inland Revenue.”
  - (4) After that sub-paragraph insert—

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“(1A) An annuity does not fail to satisfy sub-paragraph (1)(e) by reason of the operation of a pension sharing order or provision.

(1B) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' short-term annuity payable to a person (“the original dependants' short-term annuity”) ceases to be payable and in consequence of that—

- (a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' short-term annuity (a “new dependants' short-term annuity”) or a scheme pension, lifetime annuity, short-term annuity, dependants' scheme pension or dependants' annuity by the other insurance company, or
- (b) sums or assets are transferred to the relevant registered pension scheme.

(1C) The regulations may provide that—

- (a) in a case where a new dependants' short-term annuity becomes payable, the new dependants' short-term annuity is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' short-term annuity, and
- (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.

(1D) For the purposes of sub-paragraphs (1B) and (1C) a registered pension scheme is the relevant registered pension scheme if the original dependants' short-term annuity was acquired using sums or assets held for the purposes of the pension scheme.”

(5) Omit sub-paragraph (2) (which defines level annuity, increasing annuity and relevant linked annuity).

#### **Commencement Information**

**I16** Sch. 10 para. 16 in force at 6.4.2006, see Sch. 10 para. 64(1)

17 In the table in section 280(2) (index of defined expressions), insert at the appropriate place—

“dependants' annuity	paragraph 17 of Schedule 28”
“dependants' short-term annuity	paragraph 20 of Schedule 28”
“short-term annuity	paragraph 6 of Schedule 28”.



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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

#### Commencement Information

**I17** Sch. 10 para. 17 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Unsecured pension funds and alternatively secured pension funds*

- 18 (1) Paragraph 8 of Schedule 28 (member's unsecured pension fund) is amended as follows.
- (2) In sub-paragraph (1) (sums and assets designated as available for the payment of unsecured pension), for the words after “of the arrangement” substitute “ as are member-designated funds. ”
- (3) After that sub-paragraph insert—
- “(1A) For the purposes of this Part sums or assets held for the purposes of an arrangement are member-designated funds if they—
- (a) have been designated at any time under the arrangement as available for the payment of unsecured pension, or
  - (b) arise, or (directly or indirectly) derive, from sums or assets which have been so designated or which so arise or derive,
- and have not been applied towards the provision of a scheme pension.”
- (4) In sub-paragraph (3) (“relevant uncrystallised funds”), for the words after “means” substitute—
- “(a) if the arrangement is a cash balance arrangement, a sum equal to what would, on the valuation assumption in section 277(a), be available for the provision of benefits to or in respect of the member if the member became entitled to them on reaching the age of 75, and
  - (b) if it is not, such of the sums and assets held for the purposes of the arrangement as are not member-designated funds and have not been applied towards the provision of a scheme pension or a dependants' scheme pension.”
- (5) After that sub-paragraph insert—
- “(4) If any sums or assets representing the member's unsecured pension fund in respect of an arrangement under the pension scheme would (apart from this sub-paragraph) come to be taken to represent another unsecured pension fund of his under the pension scheme, or a dependant's unsecured pension fund of his under the pension scheme, they are to be treated as not doing so.”

#### Commencement Information

**I18** Sch. 10 para. 18 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 19 (1) Paragraph 10 of Schedule 28 (“unsecured pension years” etc.) is amended as follows.
- (2) In sub-paragraph (4)(“basis amount”)—
- (a) in paragraph (a), for “or recent additional fund designation” substitute “ , recent additional fund designation or recent pension sharing event ”, and

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- (b) in paragraph (b), for “or additional fund designation” substitute “, additional fund designation or pension sharing event”.
- (3) After sub-paragraph (8) insert—
  - “(8A) “Pension sharing event” means the coming into operation of a pension sharing order or provision relating to the sums and assets representing the member's unsecured pension fund.”
- (4) In sub-paragraph (9) (“recent”), for “or additional fund designation” substitute “, additional fund designation or pension sharing event”.

#### Commencement Information

**I19** Sch. 10 para. 19 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 20 (1) Paragraph 11 of Schedule 28 (member's alternatively secured pension fund) is amended as follows.
- (2) In sub-paragraph (1)(b) (exclusion of certain sums and assets), for “for purchasing a scheme pension or a lifetime annuity or paid as income withdrawal” substitute “towards the provision of a scheme pension.”
  - (3) For sub-paragraphs (2) and (3) (conditions to be met) substitute—
    - “(2) Condition A is that they—
      - (a) were part of the member's unsecured pension fund in respect of the arrangement when the member reached the age of 75, or
      - (b) arise, or (directly or indirectly) derive, from sums or assets within paragraph (a) or which so arise or derive.
    - (3) Condition B is that they—
      - (a) became held for the purposes of the arrangement after the member reached the age of 75 or arise, or (directly or indirectly) derive, from sums or assets which became so held or which so arise or derive, or
      - (b) if the arrangement is a relevant arrangement, have at any time since the member reached that age been designated as available for the payment of alternatively secured pension to the member or arise, or (directly or indirectly) derive, from sums or assets which have been so designated or which so arise or derive.”
  - (4) After sub-paragraph (4) insert—
    - “(5) If any sums or assets representing the member's alternatively secured pension fund in respect of an arrangement under the pension scheme would (apart from this sub-paragraph) come to be taken to represent another alternatively secured pension fund of his under the pension scheme, or a dependant's alternatively secured pension fund of his under the pension scheme, they are to be treated as not doing so.”

#### Commencement Information

**I20** Sch. 10 para. 20 in force at 6.4.2006, see Sch. 10 para. 64(1)

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- 21 (1) Paragraph 22 of Schedule 28 (dependant's unsecured pension fund) is amended as follows.
- (2) In sub-paragraph (1) (sums and assets designated as available for the payment of dependants' unsecured pension), for paragraphs (a) and (b) substitute—
- “(a) as are dependant-designated funds, and  
(b) have not been applied towards the provision of a dependants' scheme pension.”
- (3) After that sub-paragraph insert—
- “(2) For the purposes of this Part sums or assets held for the purposes of an arrangement are dependant-designated funds if they—
- (a) have been designated at any time under the arrangement as available for the payment of dependant's unsecured pension to the dependant, or
- (b) arise, or (directly or indirectly) derive, from sums or assets which have been so designated or which so arise or derive.
- (3) If any sums or assets representing a dependant's unsecured pension fund in respect of an arrangement under the pension scheme would (apart from this sub-paragraph)—
- (a) come to be taken to represent another dependant's unsecured pension fund of his under the pension scheme, or an unsecured pension fund of his under the pension scheme, or
- (b) are applied towards the provision of a scheme pension or a lifetime annuity,
- they are to be treated as not doing so.”

#### Commencement Information

**I21** Sch. 10 para. 21 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 22 (1) Paragraph 24 of Schedule 28 (“unsecured pension years” etc.) is amended as follows.
- (2) In sub-paragraph (4) (“basis amount”)—
- (a) in paragraph (a), for “or recent additional fund designation” substitute “, recent additional fund designation or recent pension sharing event ”, and
- (b) in paragraph (b), for “or additional fund designation” substitute “, additional fund designation or pension sharing event ”.
- (3) After sub-paragraph (8) insert—
- “(8A) “Pension sharing event” means the coming into operation of a pension sharing order or provision relating to the sums and assets representing the dependant's unsecured pension fund.”
- (4) In sub-paragraph (9) (“recent”), for “or additional fund designation” substitute “, additional fund designation or pension sharing event ”.

#### Commencement Information

**I22** Sch. 10 para. 22 in force at 6.4.2006, see Sch. 10 para. 64(1)

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- 23 (1) Paragraph 25 of Schedule 28 (dependant's alternatively secured pension fund) is amended as follows.
- (2) In sub-paragraph (1)(b) (exclusion of certain sums and assets), for “for purchasing a dependants' scheme pension or a dependants' annuity or paid as dependants' income withdrawal” substitute “ towards the provision of a dependants' scheme pension ”.
- (3) For sub-paragraphs (2) and (3) (conditions to be met) substitute—
- “(2) Condition A is that they—
- (a) were part of the dependant's unsecured pension fund in respect of the arrangement when the dependant reached the age of 75, or
- (b) arise, or (directly or indirectly) derive, from sums or assets within paragraph (a) or which so arise or derive.
- (3) Condition B is that they have at any time since the dependant reached the age of 75 been designated as available for the payment of alternatively secured dependants' pension to the dependant or arise, or (directly or indirectly) derive, from sums or assets which have been so designated or which so arise or derive.
- (4) If any sums or assets representing a dependant's alternatively secured pension fund in respect of an arrangement under the pension scheme would (apart from this sub-paragraph) come to be taken to represent another dependant's alternatively secured pension fund of his under the pension scheme, or an alternatively secured pension fund of his under the pension scheme, they are to be treated as not doing so.”

#### **Commencement Information**

**I23** Sch. 10 para. 23 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 24 In paragraph 3(8) of Schedule 29 (pension commencement lump sum: deduction from applicable amount in case of scheme pension), for “surrender” substitute “ application ”.

#### **Commencement Information**

**I24** Sch. 10 para. 24 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 25 (1) Schedule 32 (benefit crystallisation events: supplementary) is amended as follows.
- (2) In paragraph 3(1) (benefit crystallisation events 1, 2 and 4: prevention of overlap), for “surrender” substitute “ application ”.
- (3) In paragraph 5(2) (benefit crystallisation events 1 and 5: hybrid arrangements), for “the sums or assets held for the purposes of the arrangement are to be treated as having been designated” substitute “ , under paragraph 8(2) of Schedule 28, any relevant uncrystallised funds are to be treated as having been designated under the arrangement ”.

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#### Commencement Information

**I25** Sch. 10 para. 25 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Meaning of “dependant”*

26 In paragraph 15 of Schedule 28 (meaning of “dependant”), after sub-paragraph (1) insert—

“(1A) If the rules of the pension scheme so provide, a person who was married to the member when the member first became entitled to a pension under the pension scheme is a dependant of the member.”

#### Commencement Information

**I26** Sch. 10 para. 26 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Dependants' scheme pensions*

27 (1) Paragraph 16 of Schedule 28 (dependants' scheme pension) is amended as follows.

(2) Omit sub-paragraph (1) (special provisions for pension scheme with fewer than 50 members).

(3) In sub-paragraph (2) (pension scheme with 50 or more members)—

(a) for “In the case of a pension scheme with 50 or more members, a” substitute “ A ”, and

(b) omit sub-paragraph (2)(b) and the word “and” before it.

(4) After that sub-paragraph insert—

“(2A) The Board of Inland Revenue may by regulations make provision in relation to cases in which a dependants' scheme pension payable to a dependant of a member of a registered pension scheme by an insurance company (“the original dependants' scheme pension”) ceases to be payable and in consequence of that—

(a) sums or assets (or both) are transferred from the insurance company to another insurance company and are applied towards the provision of either another dependants' scheme pension (a “new dependants' scheme pension”) or a scheme pension, lifetime annuity, short-term annuity, dependants' annuity or dependants' short-term annuity by the other insurance company, or

(b) sums or assets are transferred to the relevant registered pension scheme.

(2B) The regulations may provide that—

(a) in a case where a new dependants' scheme pension becomes payable, the new dependants' scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' scheme pension, and

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- (b) in any other case, the relevant registered pension scheme is to be treated as making an unauthorised payment in respect of the member of an amount equal to the aggregate of the amount of the sums, and the market value of the assets, transferred.

(2C) For the purposes of sub-paragraphs (2A) and (2B) a registered pension scheme is the relevant registered pension scheme if the original dependants' scheme pension was acquired using sums or assets held for the purposes of the pension scheme."

(5) Omit sub-paragraphs (3) to (6) (condition to be satisfied).

#### **Commencement Information**

**I27** Sch. 10 para. 27 in force at 6.4.2006, see Sch. 10 para. 64(1)

28 In Schedule 28 (authorised pensions), after paragraph 16 insert—

“16A (1) Paragraphs 16B and 16C apply where—

- (a) the member dies after 5th April 2006,
- (b) he has reached the age of 75 before his death, and
- (c) at the time of his death he is actually or prospectively entitled to one or more scheme pensions under the pension scheme.

(2) References in this paragraph and paragraph 16B to a scheme pension include a pension payable before 6th April 2006 which would be a scheme pension if payable after that date.

16B (1) Where a pension is payable under the pension scheme to a dependant of the member in the period of 12 months beginning with the date of the member's death (“the post-death year”), so much of the pension as exceeds the initial member pension limit is not a dependants' scheme pension.

(2) But if—

- (a) more than one pension is so payable to one of the dependants of the member in the post-death year, or
- (b) pensions are so payable to more than one dependant of the member in the post-death year,

(or both), so much of any of the pensions as exceeds the appropriate portion of the initial member pension limit is not a dependants' scheme pension.

(3) The “initial member pension limit” is (subject to sub-paragraph (4)) the sum of—

- (a) the aggregate of the amounts of the scheme pensions to which the member is actually entitled under the pension scheme immediately before his death payable to the member in the period of 12 months ending with the date of his death (“the pre-death year”),
- (b) the aggregate of the amounts of the scheme pensions to which the member is prospectively entitled under the pension scheme at that time which would have been so payable if he had been

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actually entitled to the pensions throughout the pre-death year,  
and

- (c) 5% of the aggregate of the amounts of the lump sums on which there is no liability to income tax to which the member has become entitled in connection with scheme pensions under the pension scheme before his death.
- (4) But if the member became (actually) entitled to a scheme pension under the pension scheme during the pre-death year, sub-paragraph (3)(a) has effect as if the amount of that scheme pension which was payable to the member under the pension scheme in the pre-death year were the amount which would have been payable to him in the period of 12 months beginning with the date on which he became entitled to it had he not died.
- (5) The “appropriate portion” of the initial member pension limit, in relation to any pension payable under the pension scheme to a dependant of the member in the post-death year, is—

$$\frac{P}{AP}$$

where—

P is the amount of that pension payable in the post-death year, and

AP is the aggregate of the amounts of each of the pensions payable under the pension scheme to dependants of the member in the post-death year.

- 16C
- (1) Where a pension is payable under the pension scheme to a dependant of the member, otherwise than in excepted circumstances, in—
    - (a) the period of 12 months beginning with the end of the post-death year, or
    - (b) any succeeding period of 12 months,(“the 12 months in question”), so much of the pension as exceeds the current member pension limit is not a dependants' scheme pension.
  - (2) But if—
    - (a) more than one pension is so payable to one of the dependants in the 12 months in question, or
    - (b) pensions are so payable to more than one dependant of the member in the 12 months in question,(or both), so much of any of the pensions as exceeds the appropriate portion of the current member pension limit is not a dependants' scheme pension.
  - (3) “Excepted circumstances” means—
    - (a) that at the beginning of the period of 12 months in question there are at least 50 pensioner members of the pension scheme, and
    - (b) that the condition in subsection (4) is met.
  - (4) The condition in this subsection is met if —

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- (a) the difference between CYP and PYP in the case of each relevant existing pension is the same amount,
  - (b) the difference between CYP and PYP in the case of each relevant existing pension is the same percentage of PYP, or
  - (c) in the case of each relevant existing pension the difference between CYP and PYP is the aggregate of a percentage of PYP and an amount which are both the same as those the aggregate of which make up the difference between CYP and PYP in the case of each other relevant existing pension.
- (5) In this section—
- “relevant existing pension” means a pension payable to any dependant of any member under the pension scheme throughout the 12 months in question and the immediately preceding period of 12 months,
- “CYP”, in relation to a relevant existing pension, is the current year pension, that is the amount of the pension payable in the 12 months in question, and
- “PYP”, in relation to a relevant existing pension, is the previous year pension, that is the amount of the pension payable in the immediately preceding period of 12 months.
- (6) The “current member pension limit”, in relation to the 12 month period in question, is the initial member pension limit increased by the aggregate of—
- (a) the permitted margin, and
  - (b) the excepted circumstances amount.
- (7) The “permitted margin” is the amount by which the initial member pension limit would be greater if it had been increased by whichever of calculation A and calculation B gives the greater amount.
- (8) Calculation A involves increasing the initial member pension limit by the relevant annual percentage rate for the whole of the period—
- (a) beginning with the first month beginning after the end of the post-death year (“the opening month”), and
  - (b) ending with the first month of the 12 months in question (“the closing month”).
- (9) The relevant annual percentage rate is—
- (a) if the relevant valuation factor in relation to the pension scheme is a number greater than 20, the annual rate agreed by the Inland Revenue and the scheme administrator, and
  - (b) otherwise, 5% per annum.
- (10) Calculation B involves increasing the initial member pension limit by the relevant indexation percentage.
- (11) If the retail prices index for the closing month is higher than it was for the opening month, the relevant indexation percentage is the percentage increase in the retail prices index.
- (12) If it is not, the relevant indexation percentage is 0%.



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- (13) The “excepted circumstances amount” is the aggregate of the amounts of the relevant increases in pensions which were payable under the pension scheme to dependants of the member in excepted circumstances in any period or periods within subsection (1)(a) or (b).
- (14) The relevant increase in the case of any pension payable in relation to any 12 month period under the pension scheme to a dependant of the member is the difference between CYP and PYP (for this purpose reading the references in subsection (5) to the 12 months in question as references to the 12 month period).
- (15) The “appropriate portion” of the current member pension limit, in relation to any pension payable under the pension scheme to a dependant of the member in the 12 months in question, is—

$$\frac{P}{AP}$$

where—

P is the amount of that pension payable in the 12 months in question, and

AP is the aggregate of the amounts of each of the pensions payable under the pension scheme to one or more dependants of the member in the 12 months in question.”

#### Commencement Information

**I28** Sch. 10 para. 28 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Lifetime annuities and dependants' annuities purchased together*

- 29 (1) Paragraph 17 of Schedule 28 (dependants' annuity) is amended as follows.
- (2) In sub-paragraph (1) (meaning of “dependants' annuity”), before paragraph (a) insert—
- “(za) it is purchased either together with a lifetime annuity payable to the member or after the member's death,”.
- (3) After that sub-paragraph insert—
- “(1A) For the purposes of sub-paragraph (1)(za) a dependants' annuity is purchased together with a lifetime annuity if the dependant's annuity is related to the lifetime annuity.”

#### Commencement Information

**I29** Sch. 10 para. 29 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 30 (1) Paragraph 3 of Schedule 29 (pension commencement lump sum: applicable amount) is amended as follows.

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(2) In sub-paragraph (4) (applicable amount where member entitled to lifetime annuity to be one third of purchase price), for “of the annuity” substitute “ of the lifetime annuity and any related dependants' annuity ”.

(3) After that sub-paragraph insert—

“(4A) For the purposes of this Part a dependants' annuity is related to a lifetime annuity payable to a member of a registered pension scheme—

- (a) if they are purchased either in the form of a joint life annuity or separately in circumstances in which the day on which the one is purchased is no earlier than seven days before, and no later than seven days after, the day on which the other is purchased, and
- (b) the dependant's annuity will be payable to a dependant of the member.”

**Commencement Information**

**I30** Sch. 10 para. 30 in force at 6.4.2006, see Sch. 10 para. 64(1)

31 In the table in section 216(1) (benefit crystallisation events and amounts crystallised), in benefit crystallisation event 4 (becoming entitled to lifetime annuity), in column 2 (amount crystallised), insert at the end “ and any related dependants' annuity ”.

**Commencement Information**

**I31** Sch. 10 para. 31 in force at 6.4.2006, see Sch. 10 para. 64(1)

32 In paragraph 4(1) of Schedule 32 (benefit crystallisation events 4: lifetime annuity purchased from unsecured pension fund), for “is” substitute “ or a related dependants' annuity is, or both the lifetime annuity and a related dependants' annuity are, ”.

**Commencement Information**

**I32** Sch. 10 para. 32 in force at 6.4.2006, see Sch. 10 para. 64(1)

33 In the table in section 280(2) (index of defined expressions), insert at the appropriate place—

“related dependants' annuity	paragraph 3(4A) of Schedule 29”.
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**Commencement Information**

**I33** Sch. 10 para. 33 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Pension commencement lump sums*

34 (1) Paragraph 1 of Schedule 29 (meaning of “pension commencement lump sum”) is amended as follows.

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(2) In sub-paragraph (3)(b) (member must become entitled to lump sum in connection with becoming entitled to relevant pension: lump sum and pension to be under same arrangement), for “under the arrangement” substitute “, otherwise than by virtue of the operation of paragraph 8(2) of Schedule 28, under the pension scheme”.

(3) After sub-paragraph (5) insert—

“(6) The Board of Inland Revenue may by regulations provide that, where incorrect income tax has been paid by the scheme administrator in relation to the member by way of the lifetime allowance charge in circumstances prescribed by the regulations, a lump sum subsequently paid to the member in circumstances so prescribed is to be treated as a pension commencement lump sum even though either or both of the conditions in sub-paragraph (1) (c) and (e) are not met.”

#### Commencement Information

**I34** Sch. 10 para. 34 in force at 6.4.2006, see Sch. 10 para. 64(1)

35 (1) Paragraph 3 of Schedule 29 (applicable amount limit) is amended as follows.

(2) For sub-paragraph (5) (annuity purchase price: sums and assets to be disregarded) substitute—

“(5) There is to be deducted from that aggregate—

- (a) if the sums or assets applied in (or in connection with) the purchase of the annuity or any related dependants' annuity consist of or include sums or assets representing the whole or part of the member's unsecured pension fund, the aggregate of the amount of those sums and the market value of those assets, and
- (b) in any case, so much (if any) of the sums or assets applied in (or in connection with) the purchase of the annuity or any related dependants' annuity as represents rights which are attributable to a disqualifying pension credit.”

(3) In sub-paragraph (7) (scheme pensions), in the definition of AC, insert at the end “(disregarding paragraph 3 of Schedule 32).”

#### Commencement Information

**I35** Sch. 10 para. 35 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Recognised transfers*

36 In section 169 (recognised transfers), after subsection (1) insert—

“(1A) A transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme to an insurance company is to be treated as a recognised transfer if the sums or assets had been applied by the pension scheme towards the provision of a scheme pension or a dependants' scheme pension (but subject to regulations under subsections (1B) and (1C)).

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- (1B) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a scheme pension to which a member of a registered pension scheme has become entitled (“the original scheme pension”)—
- (a) the transfer is not a recognised transfer unless those sums and assets are, after the transfer, applied towards the provision of a scheme pension (a “new scheme pension”), and
  - (b) if they are so applied, the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.
- (1C) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a dependants' scheme pension to which a dependant of a member of a registered pension scheme has become entitled in respect of the member (“the original dependants' scheme pension”)—
- (a) the transfer is not a recognised transfer unless those sums and assets are, after the transfer, applied towards the provision of a dependants' scheme pension (a “new dependants' scheme pension”), and
  - (b) if they are so applied, the new dependants' scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' scheme pension.
- (1D) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent—
- (a) a person's unsecured pension fund or dependant's unsecured pension fund, or
  - (b) a person's alternatively secured pension fund or dependant's alternatively secured pension fund,
- under an arrangement (“the old arrangement”), the transfer is not a recognised transfer unless all of those sums and assets become held under an arrangement under which no other sums or assets are held (“the new arrangement”).
- (1E) If regulations so provide they may make in relation to cases in which the sums and assets become so held provision as to the treatment for the purposes of any provision of this Part of—
- (a) the sums and assets transferred, and
  - (b) the new arrangement,
- including provision for treating the sums and assets transferred as remaining, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, sums and assets held under the old arrangement.”

#### **Commencement Information**

**I36** Sch. 10 para. 36 in force at 6.4.2006, see Sch. 10 para. 64(1)

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### *Assignment*

- 37 (1) Section 172 (assignment of benefit to which member has actual or prospective entitlement to constitute unauthorised payment) is amended as follows.
- (2) In subsection (1) (members), for the words after “agrees to assign” substitute—
- “(a) any benefit, other than an excluded pension, to which the member (or any dependant of the member) has an actual or prospective entitlement under the pension scheme, or
  - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.”
- (3) In subsection (3) (other persons), for the words after “agrees to assign” substitute—
- “(a) any benefit, other than an excluded pension, to which the person has an actual or prospective entitlement under the pension scheme in respect of a member of the pension scheme, or
  - (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to the member under the pension scheme.”
- (4) In subsection (5)(b) (amount of unauthorised payment), insert at the end “ and any power to reduce the entitlement to the benefit or right did not exist. ”
- (5) In subsection (6) (payments of benefits assigned not unauthorised payments), after “benefit” insert “ or right ”.
- (6) For subsection (7) substitute—
- “(7) An excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.”

#### **Commencement Information**

**I37** Sch. 10 para. 37 in force at 6.4.2006, see Sch. 10 para. 64(1)

### *Surrender and allocation of rights etc.*

- 38 After section 172 insert—

#### **“172A Surrender**

- (1) Subsection (2) applies if a member of a registered pension scheme surrenders or agrees to surrender—
- (a) any benefit, other than an excluded pension, to which the member (or any dependant of the member) has a prospective entitlement under an arrangement under the pension scheme, or
  - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.
- (2) The pension scheme is to be treated as making an unauthorised payment to the member.
- (3) Subsection (4) applies if a person surrenders or agrees to surrender—

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- (a) any benefit, other than an excluded pension, to which the person has a prospective entitlement under an arrangement under the pension scheme relating to a member of a pension scheme, or
  - (b) any right in respect of any sums or assets held for the purposes of any arrangement relating to a member of the pension scheme under the pension scheme.
- (4) The pension scheme is to be treated as making an unauthorised payment to the person in respect of the member.
- (5) Subsections (2) and (4) do not apply to—
  - (a) a surrender pursuant to a pension sharing order or provision,
  - (b) a surrender (or agreement to surrender) by the member in return for the conferring on a dependant of an entitlement to benefits after the member's death,
  - (c) a transfer of (or agreement to transfer) benefits or rights so as to become benefits or rights under another arrangement under the pension scheme relating to the member or dependant,
  - (d) a surrender of (or agreement to surrender) benefits or rights in order to fund the making of an authorised surplus payment,
  - (e) a surrender (or agreement to surrender) which constitutes an assignment (or agreement to assign) within section 172, or
  - (f) any surrender (or agreement to surrender) of a description prescribed by regulations made by the Board of Inland Revenue.
- (6) Regulations under subsection (5)(f) may include provision having effect in relation to times before they are made.
- (7) Subsections (2) and (4) do not apply to the surrender of a benefit to which the member (or a dependant of the member) has a prospective entitlement, or to which the person has a prospective entitlement in respect of a member, under an arrangement that is a defined benefits arrangement or cash balance arrangement unless—
  - (a) in consequence of the surrender, the actual or prospective entitlement of another member (or dependant of another member) of the pension scheme, or of another person in respect of another member, to benefits under the scheme is increased, and
  - (b) the two members are or have been connected persons.
- (8) The amount of the unauthorised payment is the consideration that might be expected to be received if what is surrendered were assigned by a transaction between parties at arm's length and any power to reduce the entitlement to the benefit or right did not exist.
- (9) In this section “surrender”, in relation to any benefit or right of a member (or dependant of a member) of a pension scheme or other person, includes any schemes, arrangements or understandings of any kind (whether or not legally enforceable) the main purpose, or one of the main purposes, of which is to reduce the member's (or dependant's), or person's, entitlement to the benefit or right.
- (10) An excluded pension is so much of any pension which under pension rule 2 may continue to be paid after the member's death as may be so paid.

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- (11) Section 839 of ICTA (connected persons) applies for the purposes of this section.

### **172B Increase in rights of connected person on death**

- (1) This section applies if—
- (a) at any time after the death of a relevant member of a registered pension scheme, there is an increase in the pension rights of another member of the pension scheme which is attributable to the death, and
  - (b) the dead member and other member were connected persons immediately before the death.
- (2) A member of a registered pension scheme is a relevant member if, immediately before his death, any of his rights under the pension scheme are—
- (a) rights to benefit to which the member (or any dependant of the member) has a prospective entitlement under an arrangement under the pension scheme, or
  - (b) rights representing the member's unsecured pension fund, alternatively secured pension fund, dependant's unsecured pension fund or dependant's alternatively secured pension fund in respect of an arrangement under the pension scheme.
- (3) There is at any time an increase in the pension rights of the other member of the pension scheme which is attributable to the death if—
- (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which he is actually or prospectively entitled under the pension scheme at that time, exceeds
  - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before that time, in consequence of the death (ignoring for the purposes of paragraphs (a) and (b) any power to reduce the entitlement to the benefits).
- (4) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member's personal representatives) of an amount equal to the excess (but subject to subsection (6)).
- (5) The amount which would (apart from this subsection) constitute the unauthorised payment is to be reduced by so much of the excess as arises—
- (a) from the payment of any transfer lump sum death benefit in respect of the dead member so as to become held for the purposes of, or to represent accrued rights under, an arrangement relating to the other member,
  - (b) from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member, or
  - (c) in any manner prescribed by regulations made by the Board of Inland Revenue.
- (6) Regulations under subsection (5)(c) may include provision having effect in relation to times before they are made.

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- (7) This section does not apply if—
  - (a) at the time of the increase mentioned in subsection (1)(a) there at least 20 members of the pension scheme, and
  - (b) the benefits to which each of them is actually or prospectively entitled under the pension scheme are increased at the same rate in consequence of the death.
- (8) This section does not apply if the increase in the pension rights of the other member is brought about by an assignment (or agreement to assign) within section 172.
- (9) Section 839 of ICTA (connected persons) applies for the purposes of this section.

### **172C Allocation of unallocated employer contributions**

- (1) This section applies if—
  - (a) contributions are paid under a registered pension scheme by an employer otherwise than in respect of any individual,
  - (b) in any tax year any of the contributions become held for the purposes of the provision of benefits to or in respect of a member of the pension scheme under any relevant arrangement or arrangements (“the allocated contributions”),
  - (c) the amount of the allocated contributions exceeds the permitted maximum, and
  - (d) the member and the employer, or the member and any person connected with the employer at any time during the tax year, are connected persons at any time during the tax year.
- (2) An arrangement is a relevant arrangement if it is—
  - (a) a money purchase arrangement that is not a cash balance arrangement, or
  - (b) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, money purchase benefits other than cash balance benefits.
- (3) “The permitted maximum” is—
  - (a) the maximum amount of relief to which the member is entitled under section 188 (relief for contributions) in respect of relievable pension contributions paid during the tax year (see section 190), less
  - (b) the amount of any contributions paid by employers under any registered pension scheme in respect of the member in the tax year.
- (4) But if the member is also a member of one or more other registered pension schemes, the permitted maximum in relation to each of the registered pension schemes of which he is a member is—

$$\frac{PM}{N}$$

where—



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PM is the amount arrived at under subsection (3), and

N is the number of registered pension schemes of which he is a member.

- (5) The pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives).
- (6) The amount of the unauthorised payment is the amount by which the amount of the allocated contributions exceeds the permitted maximum.
- (7) Section 839 of ICTA (connected persons) applies for the purposes of this section.

### **172D Limit on increase in benefits**

- (1) This section applies where, at any time during any pension input period in respect of a relevant arrangement relating to a member of an occupational pension scheme that is a registered pension scheme, the member and—
  - (a) a sponsoring employer, or
  - (b) a person connected with a sponsoring employer.are connected persons.
- (2) If—
  - (a) the pension input amount for the pension input period in respect of the relevant arrangement, exceeds
  - (b) the notional unconnected person input amount for the pension input period in respect of the relevant arrangement,the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives) of an amount equal to the excess.
- (3) A relevant arrangement is an arrangement under the pension scheme that is—
  - (a) a defined benefits arrangement,
  - (b) a cash balance arrangement, or
  - (c) a hybrid arrangement under which the benefits that may be provided to or in respect of the member are, or include, defined benefits or cash balance benefits.
- (4) The pension input amount for a pension input period in respect of the relevant arrangement is to be determined in accordance with—
  - (a) sections 230 to 232 if the relevant arrangement is a cash balance arrangement,
  - (b) sections 234 to 236 if it is a defined benefits arrangement, and
  - (c) section 237 if it is a hybrid arrangement,treating references in those sections to the individual as to the member and treating section 237 as if the references to input amount B were omitted.
- (5) The notional unconnected person input amount for the pension input period in respect of the relevant arrangement is what the pension input amount, as so determined, would have been if the member were connected with—
  - (a) a sponsoring employer, or

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(b) a person connected with a sponsoring employer,  
 at no time during the pension input period.

(6) Section 839 of ICTA (connected persons) applies for the purposes of this section.”

#### **Commencement Information**

**I38** Sch. 10 para. 38 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Restriction of employers' relief in respect of contributions*

39 After section 196 insert—

#### **“196A Power to restrict relief**

- (1) The Board of Inland Revenue may make regulations for restricting the extent to which contributions paid by an employer under a registered pension scheme in respect of an individual are subject to relief in circumstances in which subsection (2) or (3) applies (or both do).
- (2) This subsection applies where any of the benefits which will or may be payable to or in respect of the individual under the registered pension scheme will be payable only if relevant benefits expected to be so paid under an employer-financed retirement benefits scheme are not so paid.
- (3) This subsection applies where, because relevant benefits are or may be payable to or in respect of the individual under an employer-financed retirement benefits scheme, the aggregate of the amount of any sums and the market value of any assets—
  - (a) held for the purposes of, or
  - (b) representing accrued rights under,
 the registered pension scheme which may be transferred by way of a recognised transfer in respect of the individual will or may be less than it otherwise would be.
- (4) The reference in subsection (1) to contributions paid by an employer being subject to relief is to—
  - (a) their being deductible in computing the amount of the profits of the employer for the purposes of Part 2 of ITTOIA 2005 (trading income) or Case I or II of Schedule D,
  - (b) their being expenses of management of the employer for the purposes of section 75 of ICTA (expenses of management: companies with investment business), or
  - (c) their being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer,
 (depending on which is appropriate in relation to the employer).
- (5) In this section—
 

“employer-financed retirement benefits scheme”, and  
 “relevant benefits”,

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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).”

#### Commencement Information

**I39** Sch. 10 para. 39 in force at 6.4.2006, see Sch. 10 para. 64(1)

40 After section 246 insert—

#### “246A Case where no relief for provision by an employer

- (1) An employer's expenses of providing relevant benefits to or in respect of a present or former employee (“the employee”) under an employer-financed retirement benefits scheme (whether or not by the making of contributions under the scheme) are not subject to relief if subsection (2) applies.
- (2) This subsection applies where—
  - (a) the provision of the relevant benefits results in a reduction in the benefits payable to or in respect of the employee under a registered pension scheme, or
  - (b) a reduction in the benefits payable to or in respect of the employee under a registered pension scheme results in the provision of the relevant benefits.
- (3) But if the extent to which contributions paid by the employer under the registered pension scheme in respect of the employee are subject to relief has been restricted in accordance with regulations under section 196A, the employer's expenses of providing the relevant benefits are not prevented from being subject to relief to the extent that is just and reasonable.
- (4) The references in this section to expenses of an employer being subject to relief are to—
  - (a) their being deductible in computing the amount of the profits of the employer for the purposes of Part 2 of ITTOIA 2005 (trading income) or Case I or II of Schedule D,
  - (b) their being expenses of management of the employer for the purposes of section 75 of ICTA (expenses of management: companies with investment business), or
  - (c) their being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer,(depending on which is appropriate in relation to the employer).
- (5) In this section—

“employer-financed retirement benefits scheme”, and  
“relevant benefits”,

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).”

#### Commencement Information

**I40** Sch. 10 para. 40 in force at 6.4.2006, see Sch. 10 para. 64(1)

**Status:** Point in time view as at 19/07/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

*Lifetime allowance: reduction of rights in respect of tax paid*

- 41 In section 215 (amount of lifetime allowance charge), omit—
- (a) in subsection (9), paragraph (b) (tax covered by scheme funded payment if rights not reduced so as fully to reflect amount of payment of tax) and the word “and” before it, and
  - (b) subsection (10) (whether rights reduced so as fully to reflect amount of payment of tax).

**Commencement Information**

**I41** Sch. 10 para. 41 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 42 In the table in section 216(1) (benefit crystallisation events and amounts crystallised), in the entry relating to benefit crystallisation event 6 (entitlement to relevant lump sum), in the second column (amount crystallised), after “sum” insert “paid to the individual”.

**Commencement Information**

**I42** Sch. 10 para. 42 in force at 6.4.2006, see Sch. 10 para. 64(1)

- 43 (1) Schedule 32 (benefit crystallisation events: supplementary) is amended as follows.
- (2) In paragraph 9 (benefit crystallisation event 2: meaning of “P”) is amended as follows.
  - (3) In sub-paragraph (2) (amount to be net of tax under section 215 paid by scheme administrator)—
    - (a) for “will or may be” substitute “is”, and
    - (b) omit “which will be payable”.
  - (4) After that sub-paragraph insert—
 

“(3) And if the reduction is such that, in accordance with normal actuarial practice, it would be taken fully to reflect the amount of the tax, the tax is not to be treated as tax paid by the scheme administrator for the purposes of section 215(9).”
  - (5) In paragraph 13 (benefit crystallisation event 3: meaning of “XP”), after sub-paragraph (3) (inserted by paragraph 8(6)) insert—
 

“(4) If the rate at which the pension is payable is reduced so as to reflect the amount of any tax under section 215 to be paid by the scheme administrator, that reduction is to be left out of account in determining the rate at which the pension is payable for the purposes of sub-paragraph (1)(a).

(5) And if the reduction is such that, in accordance with normal actuarial practice, it would be taken fully to reflect the amount of the tax, the tax is not to be treated as tax paid by the scheme administrator for the purposes of section 215(9).”
  - (6) Paragraph 14 (benefit crystallisation event 5: meaning of “DP” and “DSLS”) is amended as follows.

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(7) After sub-paragraph (1) insert—

“(1A) If the rate at which the scheme pension would be payable would be reduced so as to reflect the amount of any tax under section 215 to be paid by the scheme administrator, that reduction is to be left out of account in determining the rate at which the pension would be payable for the purposes of sub-paragraph (1).

(1B) And if the reduction is such that, in accordance with normal actuarial practice, it would be taken fully to reflect the amount of the tax, the tax is not to be treated as tax paid by the scheme administrator for the purposes of section 215(9).”

(8) In sub-paragraph (2) (“DSLS”)—

- (a) for “the amount” substitute “ so much ”, and
- (b) after “pension)” insert “ as would be paid to the individual ”.

#### Commencement Information

**I43** Sch. 10 para. 43 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Lifetime allowance: minor amendment*

**F60** 44 .....

#### Textual Amendments

**F60** Sch. 10 para. 44 omitted (retrospective to 6.4.2006) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 29 paras. 11, 12\(3\)](#)

#### *Lifetime allowance: pension credits*

45 (1) Section 220 (lifetime allowance enhancement factor in case of pension credits from previously crystallised rights) is amended as follows.

(2) In subsection (4) (pension credit factor), in the definition of APC, after “APC is” insert “ the post-commencement pension in payment portion of ”.

(3) After that subsection insert—

“(4A) The post-commencement pension in payment portion of the appropriate amount referred to in the definition of APC—

- (a) in a case where the appropriate amount is arrived at under section 29(2) or (3)(b) of WRPA 1999 or Article 26(2) or (3)(b) of WRP(NI)O 1999, is so much of that amount as is attributable to rights to a post-commencement pension in payment, and
- (b) in a case where the appropriate amount is arrived at under section 29(3)(a) of WRPA 1999 or Article 26(3)(a) of WRP(NI)O 1999, is so much of that amount as is just and reasonable.”

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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

#### **Commencement Information**

**I44** Sch. 10 para. 45 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Migrant member relief*

- 46 In paragraph 4(c) of Schedule 33 (meaning of “relevant migrant member”: requirement that person be entitled to contributions tax relief in foreign country before taking up residence in United Kingdom)—
- (a) at the beginning insert “ either ”, and
  - (b) after “resident” insert “ or meets such other condition as may be prescribed by regulations made by the Board of Inland Revenue ”.

#### **Commencement Information**

**I45** Sch. 10 para. 46 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Information*

- 47 In section 251(4)(a) (persons to whom scheme administrators can be required to provide information), after “are prescribed” insert “ or to the scheme administrators of other registered pension schemes ”.

#### **Commencement Information**

**I46** Sch. 10 para. 47 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Electronic payment*

- 48 After section 255 insert—

#### *“Payment*

#### **255A Electronic payment**

- (1) The Board of Inland Revenue may give directions requiring specified persons to use electronic means for the making of specified payments required to be made under or by virtue of this Part.
- (2) Directions under this section may make provision—
  - (a) as to conditions that must be complied with in connection with the use of electronic means for the making of any payment,
  - (b) for treating a payment as not having been made unless conditions imposed by the directions are satisfied, and
  - (c) for determining the time when a payment in accordance with directions under this section is to be taken to be made.

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- (3) Directions under this section may also make provision (which may include provision for the application of conclusive or other presumptions) as to the manner of proving for any purpose—
- (a) whether any use of electronic means for making a payment is to be taken as having resulted in the payment being made,
  - (b) the time of the making of any payment for the making of which electronic means have been used, and
  - (c) any other matter for which provision may be made by directions under this section.
- (4) Directions under this section—
- (a) may be specific or general, and
  - (b) may provide that the conditions of any authorisation or requirement imposed by the directions are to be taken to be satisfied only where the Inland Revenue is satisfied as to specified matters.
- (5) Directions under this section may—
- (a) suspend for any period during which the use of electronic means for the making of payments is impossible or impractical, any requirements imposed by the directions relating to the use of such means,
  - (b) substitute alternative requirements for the suspended ones, and
  - (c) make any provision that is necessary in consequence of the imposition of the substituted requirements.
- (6) Directions under this section may—
- (a) make different provision for different cases,
  - (b) make such incidental, supplementary, consequential and transitional provision in connection with any provision contained in such directions as the Board of Inland Revenue thinks fit.
- (7) In this section—
- “the Inland Revenue” includes any person who for the purposes of the electronic means of payment is acting under the authority of the Board of Inland Revenue, and
  - “specified” means specified in a direction under this section.

### **255B Payments to be cleared payments**

- (1) A payment made to the Board of Inland Revenue or the Inland Revenue under or by virtue of this Part (otherwise than in cash) is to be treated as not having been made until the earliest date on or before which all the transactions that need to be completed before the whole amount of the payment becomes available to the Board are capable of being completed.
- (2) In this section “the Inland Revenue” includes any person who is acting under the authority of the Board of Inland Revenue.”

#### **Commencement Information**

**I47** Sch. 10 para. 48 in force at 6.4.2006, see Sch. 10 para. 64(1)

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*Insurance company liable as scheme administrator*

49 (1) After section 273 insert—

**“273A Insurance company liable as scheme administrator**

- (1) The Board of Inland Revenue may make regulations in relation to cases where an insurance company makes a payment of—
    - (a) a pension protection lump sum death benefit,
    - (b) an annuity protection lump sum death benefit, or
    - (c) an unsecured pension fund lump sum death benefit,
 which (by virtue of section 161(3) and (4)) is treated for the purposes of Chapter 3 as made by a registered pension scheme.
  - (2) The regulations may provide that the insurance company—
    - (a) is to be treated as the scheme administrator for the purposes of the operation of section 206 in relation to the lump sum death benefit, and
    - (b) is responsible for the discharge of all obligations imposed on the scheme administrator by or under this Part so far as related to the liability imposed by that section to pay tax in respect of it.
  - (3) Where an insurance company is liable to pay any tax or interest, or is responsible for the discharge of any other obligation, by virtue of regulations under this section, no other person is liable to pay that tax, or responsible for the discharge of that obligation, under sections 270 to 273.”
- (2) In section 274(3)(b) (liabilities and other obligations under certain sections not affected by pension scheme being terminated or ceasing to be registered), insert at the end “ or regulations under section 273A ”.

**Commencement Information**

**I48** Sch. 10 para. 49 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Power to split schemes*

50 Before section 275 insert—

**Power to split schemes**

- “274A) The Board of Inland Revenue may make regulations for and in connection with treating registered pension schemes to which this section applies as if they were a number of separate registered pension schemes for such of the purposes of this Part and of provision made under it as are prescribed by the regulations.
- (2) This section applies to pension schemes prescribed, or of a description prescribed, by the regulations.
  - (3) The provision that may be made by the regulations may, in particular, include—



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- (a) provision as to who is to be treated as the scheme administrator in relation to each of the separate pension schemes, and
- (b) any such other modifications of the provision made by and under this Part as appears appropriate in consequence of, or otherwise in connection with, provision made under subsection (1) (including provision so made by virtue of paragraph (a) of this subsection).

(4) The regulations may make different provision for different cases.”

#### Commencement Information

**I49** Sch. 10 para. 50 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Power to modify rules of existing schemes*

- 51 In paragraph 3(2) of Schedule 36 (power to modify rules of existing schemes: modifications to have effect until earlier of time when rules amended and end of tax year 2008-09), for the words after “the pension scheme” substitute “which state that the modifications no longer apply in relation to it take effect, or
- (b) the end of the tax year 2010-11 or such later time as the Board of Inland Revenue may by regulations prescribe.”

#### Commencement Information

**I50** Sch. 10 para. 51 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Primary and enhanced protection: valuation of uncrystallised rights*

- 52 (1) Schedule 36 (transitional provisions) is amended as follows.
- (2) Paragraph 9 (valuation of uncrystallised rights under pension schemes within paragraph 1(1)(a) to (d)) is amended as follows.
  - (3) In sub-paragraph (2) (alternative values)—
    - (a) omit “the lower of”, and
    - (b) for “and” at the end of paragraph (a) substitute “ or (if lower) ”.
  - (4) In sub-paragraph (4) (the maximum permitted pension), after “means” insert—
    - “(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section 611(1)(a) of ICTA, the maximum annual pension that could be paid to the individual under the pension scheme on 5th April 2006, and
    - (b) in any other case,”.
  - (5) In sub-paragraph (5) (assumptions)—
    - (a) in paragraph (a), at the beginning insert “ in the case of any arrangement, that ” and for “2006, that” substitute “ 2006 ”,
    - (b) after that paragraph insert—
      - “(aa) in the case of an arrangement within sub-paragraph (4)(a), that the valuation assumptions apply (see section 277),”, and

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- (c) in paragraph (b), at the beginning insert “ in the case of any other arrangement, that ” and for “scheme, that” substitute “ scheme ”.
- (6) Paragraph 26 (lump sum protection: limit on value of uncrystallised rights under pension schemes within paragraph 1(1)(a) to (d)) is amended as follows.
- (7) In sub-paragraph (2) (alternative values)—
  - (a) omit “the lower of”, and
  - (b) for “and” at the end of paragraph (a) substitute “ or (if lower) ”.
- (8) In sub-paragraph (3) (the maximum permitted lump sum), after “means” insert—
  - “(a) in the case of an arrangement under a pension scheme which immediately before 6th April 2006 was within section 611(1)(a) of ICTA, the maximum lump sum that could be paid to the individual under the pension scheme on 5th April 2006, and
  - (b) in any other case,”.
- (9) In sub-paragraph (4) (assumptions)—
  - (a) in paragraph (a), at the beginning insert “ in the case of any arrangement, that ” and for “2006, that” substitute “ 2006 ”,
  - (b) after that paragraph insert—
    - “(aa) in the case of an arrangement within sub-paragraph (3)(a), that the valuation assumptions apply (see section 277),”
    - and
  - (c) in paragraph (b), at the beginning insert “ in the case of any other arrangement, that ” and for “scheme, that” substitute “ scheme ”.

#### **Commencement Information**

**I51** Sch. 10 para. 52 in force at 6.4.2006, see Sch. 10 para. 64(1)

#### *Enhanced protection*

- 53 (1) Schedule 36 (transitional provisions) is amended as follows.
- (2) Paragraph 12 (enhanced protection) is amended as follows.
- (3) In sub-paragraph (2) (circumstances in which paragraph ceases to apply), after paragraph (a) insert—
  - “(aa) there is an impermissible transfer into the arrangement or any of the arrangements (see paragraph 17A),”.
- (4) In sub-paragraph (3) (effect of enhanced protection), for the words after “an individual” substitute—
  - “(a) there is no liability to the lifetime allowance charge in respect of the individual, and
  - (b) the payment of a lifetime allowance excess lump sum to the individual is not permitted by the lump sum rule (see section 166).”
- (5) In sub-paragraphs (5) and (6) (no enhanced protection if unsurrendered relevant excess), for “9” substitute “ 9(3) ”.
- (6) In sub-paragraph (9)—

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- (a) in paragraph (a), for “and 14” substitute “, 14 and 17A(1) and (2)”, and
  - (b) in paragraph (b), for “and 15” substitute “, 15 and 17A(3)”.
- (7) In paragraph 13(a) (loss of enhanced protection: relevant benefit accrual in case of money purchase arrangement that is not a cash balance arrangement), after “the arrangement” insert “ or, where the arrangement has been a hybrid arrangement, if a relevant contribution was so paid at any time after 5th April 2006, ”.
- (8) Paragraph 14 (loss of enhanced protection: relevant benefit accrual) is amended as follows.
- (9) In sub-paragraph (1)(c) (relevant benefit accrual: relevant contributions consisting in employer's contribution becoming held for individual), for “by an employer of the individual otherwise than” substitute “ otherwise than by or on behalf of the individual or by an employer of the individual ”.
- (10) In sub-paragraph (2) (contributions which are not relevant contributions)—
  - (a) for the words from the beginning to “minimum” substitute “ Minimum ”, and
  - (b) insert at the end “ are not relevant contributions for the purposes of paragraph 13(a) ”.
- (11) Paragraph 16 (enhanced protection: post-commencement earnings limit for capped individuals) is amended as follows.
- (12) In sub-paragraph (1) (individuals to whom paragraph applies), for “whom section 590C of ICTA (earnings cap) had effect in” substitute “whom—
  - (a) section 590C of ICTA or paragraph 20 of Schedule 6 to FA 1989 (earnings cap) had effect, or
  - (b) provision similar to section 590C of ICTA had effect by virtue of conditions imposed under section 591 of that Act (discretionary approval),in ”.
- (13) In sub-paragraph (5) (appropriate three year period), for “the time when the first relevant event occurs” substitute “the earliest of—
  - (a) the first relevant event,
  - (b) the individual leaving the employment to which the arrangement relates, and
  - (c) the individual's death.”
- (14) After that sub-paragraph insert—

“(5A) Where the appropriate three year period ends otherwise than with the first relevant event, Amount B is what it would be apart from this sub-paragraph increased by whichever is the greatest of—

  - (a) the percentage by which an amount would be increased if it were increased for the period beginning with the date on which it ends and ending with the date on which the relevant event occurs at an annual rate of 5%,
  - (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, or

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- (c) the percentage by which the retail prices index for the month in which the first relevant event occurs is higher than that for the month in which the appropriate period ends.”
- (15) In paragraph 17 (enhanced protection: post-commencement earnings limit for other individuals), after sub-paragraph (5) insert—
  - “(6) Where the appropriate three year period ends otherwise than with the first relevant event, Amount D is what it would be apart from this sub-paragraph increased by whichever is the greatest of—
    - (a) the percentage by which an amount would be increased if it were increased for the period beginning with the date on which it ends and ending with the date on which the relevant event occurs at an annual rate of 5%,
    - (b) the percentage by which an amount would be increased if it were increased for that period at an annual percentage rate referred to in regulations made by the Board of Inland Revenue, or
    - (c) the percentage by which the retail prices index for the month in which the first relevant event occurs is higher than that for the month in which the appropriate period ends.”
- (16) After that paragraph insert—
  - “17A(1) There is an impermissible transfer into a relevant existing arrangement relating to an individual under a pension scheme in a case where the relevant existing arrangement is a money purchase arrangement that is not a cash balance arrangement if—
    - (a) sums or assets held for the purposes of, or representing rights under, an arrangement relating otherwise than to the individual are transferred so as to become held for the purposes of the relevant existing arrangement, otherwise than pursuant to a pension sharing order or provision,
    - (b) sums or assets which are neither held for the purposes of, nor represent rights under, a pension scheme are so transferred, or
    - (c) a transfer lump sum death benefit is paid so as to become held for the purposes of, or to represent accrued rights under, the relevant existing arrangement.
  - (2) Sub-paragraph (1) applies where the relevant existing arrangement has been a hybrid arrangement as if the references to sums or assets being transferred, or to a transfer lump sum death benefit being paid, were to transfer or payment at any time after 5th April 2006.
  - (3) There is an impermissible transfer into a relevant existing arrangement relating to an individual under a pension scheme in a case where the relevant existing arrangement is a cash balance arrangement or a defined benefits arrangement if it becomes a money purchase arrangement that is not a cash balance arrangement.”

#### **Commencement Information**

**I52** Sch. 10 para. 53 in force at 6.4.2006, see Sch. 10 para. 64(1)

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*Transitional provisions: persons who may take benefits before normal minimum pension age*

- 54 (1) Schedule 36 (transitional provisions) is amended as follows.
- (2) In paragraph 19(5) (individuals permitted to take pension before normal minimum pension age), omit “and the pension scheme”.
  - (3) In the heading before paragraph 21, for “pension” substitute “ benefit ”.
  - (4) Paragraph 22 (right to take pension before normal minimum pension age: protected pension scheme where original pension scheme within paragraph 1(1)(a), (b), (c), (d) or (e)) is amended as follows.
  - (5) In sub-paragraph (4)(a) (entitlement to pension at age of less than 55), for “a pension” substitute “ any benefit ”.
  - (6) In sub-paragraph (7) (retirement condition)—
    - (a) in paragraph (a), for “pensions” substitute “ benefits ”, and
    - (b) in paragraph (b), for “a pension” substitute “ any benefit ”.
  - (7) In sub-paragraph (8) (member's protected pension age), for “a pension” substitute “ any benefit ”.

#### **Commencement Information**

**I53** Sch. 10 para. 54 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Transitional provisions: block transfers*

- 55 (1) Schedule 36 (transitional provisions) is amended as follows.
- (2) Paragraph 22 (right to take pension before normal minimum pension age: protected pension scheme where original pension scheme within paragraph 1(1)(a), (b), (c), (d) or (e)) is amended as follows.
  - (3) In sub-paragraph (5) (condition B: membership due to block transfer from original pension scheme), for the words after “the pension scheme” substitute “(“a transferee pension scheme”) as a result of—
    - (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met to the transferee pension scheme, or
    - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.”
  - (4) For paragraph (b) of sub-paragraph (6) substitute—
    - “(b) either the member was not a member of the pension scheme to which the transfer is made before the transfer or he has been a member of that pension scheme for no longer than such period as is prescribed by regulations made by the Board of Inland Revenue.”
  - (5) In paragraph 23(5) (right to take pension before normal minimum pension age: condition B in case of protected pension scheme where original pension scheme

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within paragraph 1(1)(f) or (g)), for the words after “the pension scheme” substitute “(“a transferee pension scheme”) as a result of—

- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.”
- (6) In paragraph 31(7) (entitlement to lump sums exceeding 25% of uncrystallised rights: condition B), for the words after “the pension scheme” substitute “(“a transferee pension scheme”) as a result of—
- (a) a block transfer from the pension scheme (“the original pension scheme”) in relation to which condition A is met to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.”
- (7) In paragraph 51(5) (pre-commencement entitlement to corresponding relief), for the words after “a pension scheme” insert “(“a transferee pension scheme”) if there has been—
- (a) a block transfer from the pension scheme within sub-paragraph (1) (“the original pension scheme”) to the transferee pension scheme, or
  - (b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.”

#### **Commencement Information**

**I54** Sch. 10 para. 55 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Transitional provisions: lump sums before normal minimum pension age*

56 In Schedule 36 (transitional provisions), after paragraph 23 insert—

“23A (1) Where—

- (a) paragraph 19 applies to a benefit crystallisation event occurring in relation to an individual, and
- (b) the benefit crystallisation event consists in the individual becoming entitled to a pension or a pension commencement lump sum,

paragraph 2(6) of Schedule 29 has effect as if CSLA were the current standard lifetime allowance reduced by the relevant percentage (within the meaning of paragraph 19).

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- (2) Sub-paragraph (3) applies where, after the occurrence in relation to an individual of a benefit crystallisation event in relation to which paragraph 19 has had effect, another benefit crystallisation event occurs in relation to the individual.
- (3) If the amount crystallised on the previous benefit crystallisation event exceeded the available amount of the individual's lifetime allowance at the time of that benefit crystallisation event, paragraph 2(6) of Schedule 29 has effect as if, for the purposes of AAC, the amount crystallised were the available amount of the individual's lifetime allowance at that time."

**Commencement Information**

**I55** Sch. 10 para. 56 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Transitional provisions: lump sums exceeding 25% of uncrystallised rights*

- 57 In the substituted sub-paragraph (7) set out in paragraph 34(2) of Schedule 36 (entitlement to lump sums exceeding 25% of uncrystallised rights), in the definition of "ALSA", for "additional lump sum amount" substitute "greater of the additional lump sum amount and nil".

**Commencement Information**

**I56** Sch. 10 para. 57 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Transitional provisions: inheritance tax*

- 58 (1) Schedule 36 (transitional provisions) is amended as follows.
- (2) In paragraph 57(1) and (2) (no contributions under scheme after 5th April 2006), for "proportion", in each place, substitute "percentage".
- (3) In paragraph 58(6)(b) (other cases), after "any" insert "relevant".

**Commencement Information**

**I57** Sch. 10 para. 58 in force at 6.4.2006, see Sch. 10 para. 64(1)

*Trivial commutation and winding-up lump sums*

- 59 In section 636B(3) of ITEPA 2003 (trivial commutation and winding-up lump sums: taxable pension income to be 75% of lump sum where member has not become entitled to any benefits under pension scheme), for the words after "member" substitute "has uncrystallised rights (within the meaning of section 212 of FA 2004) under any one or more arrangements under the pension scheme, the amount of the taxable pension income—
- (a) if all his rights under the pension scheme are uncrystallised rights, is 75% of the lump sum, and

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- (b) otherwise, is reduced by 25% of the value of the uncrystallised rights calculated in accordance with that section.”

#### **Commencement Information**

**I58** Sch. 10 para. 59 in force at 6.4.2006, see Sch. 10 para. 64(1)

VALID FROM 06/04/2007

#### *Application of PAYE to annuities etc.*

- 60 In section 683(3) of ITEPA 2003 (PAYE pension income), after the entry relating to section 579B of that Act insert— “section 612, so far as relating to annuities to which section 610 applies (annuities under non-registered occupational pension schemes), ”.
- 61 In Schedule 36 to FA 2004 (transitional provisions), omit—
- (a) paragraph 43 (continuation of Chapter 9 of Part 9 of ITEPA 2003 for certain annuity contracts with continued exclusion from PAYE), and
  - (b) paragraph 46 (application of PAYE to certain existing annuity contracts taxable under section 612 of ITEPA 2003).
- 62 In sections 348(1A) and 349(1A) of ICTA (deduction of tax), omit—
- (a) paragraph (b), and
  - (b) in paragraph (c), “, 610”.

#### *House of Commons Members' Fund*

- 63 Section 613(1) and (2) of ICTA (tax relief for contributions to House of Commons Members' Fund) shall be treated as not having been repealed by ITEPA 2003.

#### *Commencement*

- 64 (1) Subject as follows, the preceding provisions of this Schedule come into force on 6th April 2006.
- (2) Paragraphs 60 to 62 come into force on 6th April 2007.
- (3) Paragraph 63 comes into force on the day on which this Act is passed.



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## SCHEDULE 11

Section 104

### REPEALS

#### PART 1

##### EXCISE DUTIES

##### VEHICLE EXCISE DUTY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Vehicle Excise and Registration Act 1994 (c. 22)	In section 4, subsection (3) and, in subsection (7), the words “or (3)”. In Schedule 1, paragraph 10(3A) and (3B).
Finance Act 1995 (c. 4)	In Schedule 4, paragraph 14(7)(b), (8)(b) and (9).
Finance Act 1999 (c. 16)	Section 8(4).
Finance Act 2001 (c. 9)	In Schedule 2, paragraph 6.
Finance Act 2003 (c. 14)	Section 14(1)(a) and (2).

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These repeals have effect in accordance with section 7 of this Act.

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#### PART 2

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

##### (1) EXTENSION OF OUTPLACEMENT SERVICES ETC EXEMPTION: PART-TIME EMPLOYEES

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 310(4), “full-time”. In section 311— (a) in subsection (3), paragraph (d) and the word “and” before it; (b) in subsection (4)(c), “full-time”.

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These repeals have effect in accordance with section 18(5) of this Act.

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##### (2) EMPLOYEE SECURITIES

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 119A(3), the words following the paragraphs.

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This repeal has effect in accordance with section 22 of this Act.

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### (3) FILMS: RESTRICTIONS ON RELIEF FOR PRODUCTION AND ACQUISITION EXPENDITURE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance (No. 2) Act 1992 (c. 48)	Section 40A(5). In section 42— (a) in subsection (2), the word and immediately before paragraph (b), and (b) in subsection (3), the word and immediately before paragraph (b). In section 43(1), the definitions of master disc, master negative and master tape.
Finance (No. 2) Act 1997 (c. 58)	Section 48(3), (4) and (5).
Finance Act 2002 (c. 23)	Section 101.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In section 138 (as substituted by this Act), in subsection (5), in Calculation 2, paragraph (c) and the word and immediately before it. In section 138A(5), Calculation 2. In section 139— (a) in subsection (1), the word and immediately before paragraph (e), and (b) in subsection (5)(d) the words , or section 42 of that Act (but not as applied by section 48(1) and (2) of F(No.2)A 1997),. In section 140— (a) in subsection (1), paragraph (b) and the word and immediately before paragraph (f), (b) subsection (2), and (c) in subsection (6)(d), the words , or section 42 of that Act (but not as applied by section 48(1) to (3) of F(No.2)A 1997),.

- 1 The repeals in section 40A(5) and 43(1) of F(No.2)A 1992 have effect in accordance with paragraph 31(3) of Schedule 3 to this Act.
- 2 The repeals in section 42 of that Act have effect in accordance with paragraph 1(6) to (8) of that Schedule.
- 3 The repeals in section 48 of F(No.2)A 1997 have effect in accordance with paragraph 10(2) to (4) of that Schedule.
- 4 The repeal of section 101 of FA 2002 has effect in accordance with paragraph 2(2) and (3) of that Schedule.
- 5 The repeals in section 138 of ITTOIA 2005 have effect in accordance with paragraph 11(5) to (7) of that Schedule.
- 6 The repeal in section 138A of that Act has effect in accordance with paragraph 12(6) to (8) of that Schedule.
- 7 The repeal in section 139(1) of that Act has effect in accordance with paragraph 4(4) and (5) of that Schedule.
- 8 The repeal in section 139(5) of that Act has effect in accordance with paragraph 13 of that Schedule.

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- 9 The repeal in section 140(6) of that Act has effect in accordance with paragraph 14 of that Schedule.
- 10 The remaining repeals in that section have effect in accordance with paragraph 5(4) to (6) of that Schedule.

#### (4) PARTNERS: REMOVAL OF RESTRICTION ON INTEREST RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	<p>In section 117—</p> <p>(a) in subsection (1), the words 353, and, in paragraph (a), the words , or of interest paid by him in connection with the carrying on of a trade,,</p> <p>(b) in subsection (2), in the definition of the aggregate amount, the words 353, and, in paragraph (a), the words , or of interest paid by him in connection with carrying it on,, and</p> <p>(c) in that subsection, in the definition of the appropriate time, the words or the interest paid.</p> <p>In section 118ZB(2), the words , or interest paid by him in connection with the carrying on of a trade,.</p> <p>In section 118ZE(1), the words 353, and , or interest paid by him in connection with the carrying on of a trade,.</p> <p>In section 118ZF(1), the words 353, and , or of interest paid by him in connection with carrying it on,.</p> <p>In section 118ZG(2)(b)(ii), the words 353, and , or of interest paid by him in connection with carrying it on,.</p> <p>In section 118ZJ—</p> <p>(a) in subsection (3), the words 353, and , and interest paid by him in connection with carrying it on,,</p> <p>(b) in subsection (4), the words the sum of, paragraph (b) and the word and immediately before that paragraph, and</p> <p>(c) in subsection (5), paragraph (b) and the word and immediately before it.</p>

These repeals have effect in accordance with section 72(7) to (12) of this Act.

#### (5) BAD DEBTS AND RELATED MATTERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 74(1)(j) and (2). Section 94(2).

These repeals have effect in accordance with section 80(4) of this Act.

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	Section 103(4A).
Finance Act 1994 (c. 9)	Section 144(1), (5) and (6).
Finance Act 1996 (c. 8)	In Schedule 9— (a) paragraph 6B; (b) paragraph 6C(2); (c) paragraph 8; (d) paragraph 9.
Finance Act 2002 (c. 23)	In Schedule 25, paragraph 26. In Schedule 29, paragraph 115(2).
Finance Act 2004 (c. 12)	In Schedule 10— (a) paragraph 24; (b) paragraph 25(4); (c) paragraph 26; (d) paragraph 27.

These repeals have effect in accordance with section 80(4) of this Act.

#### (6) FOREIGN CURRENCY ACCOUNTING

<b><i>Short title and chapter</i></b>	<b><i>Extent of repeal</i></b>
Income and Corporation Taxes Act 1988 (c. 1)	Section 747(4A) and (4B). Section 747A. Section 748(4) and (5). Section 750(5) to (8). In Schedule 24, paragraph 11A.
Finance Act 1995 (c. 4)	In Schedule 25— (a) paragraphs 2 to 5; (b) paragraph 6(4).
Finance Act 1996 (c. 8)	In Schedule 36, paragraph 1(3)(b) and (c).
Finance Act 1998 (c. 36)	In Schedule 17, paragraph 2.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 66(3).
Finance Act 2002 (c. 23)	In Schedule 23, paragraph 19.

These repeals have effect in accordance with paragraph 24(2) of Schedule 4 to this Act.

#### (7) OTHER PROVISIONS CONNECTED WITH ACCOUNTING PRACTICE

<b><i>Short title and chapter</i></b>	<b><i>Extent of repeal</i></b>
Income and Corporation Taxes Act 1988 (c. 1)	In section 43A(3), paragraphs (a) and (b) and the word and preceding paragraph (a). Section 836A.
Finance Act 1996 (c. 8)	In Schedule 9, paragraph 19A(6).

1 The repeals in sections 50, 51, 52 and 54 of FA 2004 have effect in accordance with paragraph 50 of Schedule 4 to this Act.

2 The other repeals have effect in accordance with section 80(4) of this Act.

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Finance Act 1997 (c. 16)	In Schedule 12, in paragraph 30(1), the definitions of consolidated group accounts, group of companies and member in relation to a group of companies.
Finance Act 2002 (c. 23)	Section 103(2). In Schedule 25, paragraph 12(2). In Schedule 29— (a) paragraph 6(2); (b) in paragraph 15(4), in the definitions of Previous Debits and Previous Credits the words from under to accounting policy); (c) paragraph 20(1)(a), (b) and (c); (d) in paragraph 27(1), in the definitions of Debits and Credits the words from under to accounting policy); (e) in paragraph 134(1), the words following paragraph (b).
Finance Act 2004 (c. 12)	In sections 50(6), 51(6), 52(3) and 54(2), paragraph (b) and the word and preceding it. In Schedule 10— (a) paragraph 12; (b) paragraph 72; (c) paragraph 73(3); (d) paragraphs 74 to 76.

1 The repeals in sections 50, 51, 52 and 54 of FA 2004 have effect in accordance with paragraph 50 of Schedule 4 to this Act.

2 The other repeals have effect in accordance with section 80(4) of this Act.

#### (8) DOUBLE TAXATION RELIEF: LIMITS ON CREDIT

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Subsections (4) to (9) of section 803.

This repeal has effect in accordance with the provisions of section 86 of this Act.

#### (9) TAX AVOIDANCE INVOLVING ANNUAL PAYMENTS AND DOUBLE TAXATION RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 801(4A) to (4D).
Finance Act 2001 (c. 9)	In Schedule 27, paragraph 3.

These repeals have effect in accordance with section 91(8) of this Act.

**Status:** Point in time view as at 19/07/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2005. (See end of Document for details)

## (10) TONNAGE TAX

### **Short title and chapter**

### **Extent of repeal**

Finance Act 2000 (c. 17)

In Schedule 22, paragraph 105.

This repeal has effect in accordance with paragraph 18(1) of Schedule 7 to this Act.

## PART 3

### STAMP TAXES

#### (1) STAMP DUTY LAND TAX: ALTERNATIVE PROPERTY FINANCE

### **Short title and chapter**

### **Extent of repeal**

Finance Act 2003 (c. 14)

In section 72, in subsection (1)(c) the words “or its successor in title”, and subsection (8).

These repeals have effect in accordance with paragraph 7(1) of Schedule 8 to this Act.

#### (2) STAMP DUTY LAND TAX: DISADVANTAGED AREAS RELIEF

### **Short title and chapter**

### **Extent of repeal**

Finance Act 2003 (c. 14)

In Schedule 6—

- (a) paragraph 4;
- (b) in the second sentence of paragraph 6(1), the words “land that is non-residential property or”;
- (c) paragraphs 6(2) and 6(3);
- (d) paragraph 8;
- (e) in the second sentence of paragraph 10(1), the words “land that is non-residential property or”;
- (f) paragraphs 10(2) and 10(3).

These repeals have effect in accordance with paragraph 7(1) of Schedule 8 to this Act.

## PART 4

### PENSIONS ETC

### **Short title and chapter**

### **Extent of repeal**

Income and Corporation Taxes Act 1988  
(c. 1)

In sections 348(1A) and 349(1A)—

- (a) paragraph (b), and
- (b) in paragraph (c), “, 610”.

Finance Act 2004 (c. 12)

In section 215—

1 The repeals in ICTA and of paragraphs 43 and 46 of Schedule 36 to FA 2004 come into force on 6th April 2007.

2 The remaining repeals come into force on 6th April 2006.

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(a) in subsection (9), paragraph (b) and the word “and” before it, and

(b) subsection (10).

In Schedule 28—

(a) in paragraph 2, sub-paragraph (1) and, in sub-paragraph (4), the word “or” at the end of paragraph (b),

(b) paragraph 3(3) to (6),

(c) paragraph 6(2),

(d) in paragraph 16, sub-paragraph (1), in sub-paragraph (2), paragraph (b) and the word “and” before it, and sub-paragraphs (3) to (6), and

(e) paragraph 20(2).

In Schedule 32, in paragraph 9(2), the words “which will be payable”.

In Schedule 36—

(a) in paragraph 9(2), the words “the lower of”,

(b) in paragraph 19(5), the words “and the pension scheme”,

(c) in paragraph 26(2), the words “the lower of”, and

(d) paragraphs 43 and 46.

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1 The repeals in ICTA and of paragraphs 43 and 46 of Schedule 36 to FA 2004 come into force on 6th April 2007.

2 The remaining repeals come into force on 6th April 2006.

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**Status:**

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**Changes to legislation:**

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