



Finance Act 2005

2005 CHAPTER 7

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.

Status: This is the original version (as it was originally enacted).

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.

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

Status: This is the original version (as it was originally enacted).

- (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
 - (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—

Status: This is the original version (as it was originally enacted).

“(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.

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—

Status: This is the original version (as it was originally enacted).

- (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”.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.

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—

Status: This is the original version (as it was originally enacted).

“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—
- “**(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,

Status: This is the original version (as it was originally enacted).

- (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.

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).
- (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

Status: This is the original version (as it was originally enacted).

- (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.

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

Status: This is the original version (as it was originally enacted).

- “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).
- (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

Status: This is the original version (as it was originally enacted).

- (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—
- (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,

Status: This is the original version (as it was originally enacted).

- (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.
 - (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

Status: This is the original version (as it was originally enacted).

- (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.”
- (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 trustees from property held on qualifying trusts for the benefit of a vulnerable person, and
 - (b) chargeable gains accruing to trustees 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).

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 trustees if—

- (a) in the tax year they hold property on qualifying trusts for the benefit of a vulnerable person, and
- (b) a vulnerable person election has effect for all or part of the tax year in relation to those trusts and that person.

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 trustees 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 section 660G(1) and (2) of ICTA) is regarded as having an interest for the purposes of section 660A of that Act (income arising under settlement where settlor retains an interest).

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

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 total 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.

Status: This is the original version (as it was originally enacted).

- (3) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

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).
- (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).

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.
- (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.
- (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).
- (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).

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.

Status: This is the original version (as it was originally enacted).

- (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—

$$TQTG - VQTG$$

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—

$$TLVA - TLVB$$

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).

Status: This is the original version (as it was originally enacted).

- (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 the powers conferred on the trustees by—
- (a) section 32 of the Trustee Act 1925 (c. 19) (powers of advancement), or
 - (b) section 33 of the Trustee Act (Northern Ireland) 1958 (c. 23 (N.I.)) (corresponding provision for Northern Ireland).
- (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.

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

Status: This is the original version (as it was originally enacted).

- (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 the powers conferred on the trustees by—
- (a) section 32 of the Trustee Act 1925 (c. 19) (powers of advancement), or
 - (b) section 33 of the Trustee Act (Northern Ireland) 1958 (c. 23 (N.I.)) (corresponding provision for Northern Ireland).
- (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)).

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 trustees 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
 - (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.

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—

Status: This is the original version (as it was originally enacted).

- (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—
- (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

Status: This is the original version (as it was originally enacted).

- (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.

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

Status: This is the original version (as it was originally enacted).

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”,
 - (b) in that subsection, for paragraph (a) substitute—
 - “(a) constituted by the appointment of an executor dative to administer an intestate estate where the relevant minor has a right to any of the estate,” and
 - (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”.
- (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).

43 Penalties under TMA 1970

- (1) Section 98 of TMA 1970 (special returns, etc) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (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 trustees and a vulnerable person are to be treated as given or made by the trustees.

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.”
- (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 or 49.
- (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

Status: This is the original version (as it was originally enacted).

- (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.

Arrangements giving rise to alternative finance return

47 Alternative finance arrangements: alternative finance return

- (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.
- (5) In this Chapter references to “alternative finance return” are to be read in accordance with subsections (6) and (7).
- (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 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 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

Status: This is the original version (as it was originally enacted).

- (c) the loan were made on arm's length terms and accounted for under generally accepted accounting practice.

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: profit share return

- (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.

- (2) In this Chapter references to “profit share return” are references to amounts paid or credited as mentioned in subsection (1)(c) by a financial institution under arrangements falling within this section.

Status: This is the original version (as it was originally enacted).

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, 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 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
 - (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.
- (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).

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—
 - (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 or section 49,
 - (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 or section 49.
- (4) Where the arrangements would, but for subsection (3), fall within section 47, 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 49, 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.
- (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).

53 Treatment of section 47 arrangements: sale and purchase of asset

- (1) Where under arrangements falling within section 47 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.

Status: This is the original version (as it was originally enacted).

54 Section 49 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.

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.

57 Interpretation of Chapter

In this Chapter—

- “alternative finance arrangements” has the meaning given by section 46(1);
- “alternative finance return” has the meaning given by section 47(5);
- “financial institution” has the meaning given by section 46(2);
- “profit share return” has the meaning given by section 49(2);
- “property business” has the meaning given by section 263(6) of ITTOIA 2005.

CHAPTER 6

FILM RELIEF

Tax relief for limited-budget films

58 Relief for production and acquisition expenditure on limited-budget films

- (1) In section 48 of F(No 2)A 1997 (relief for production and acquisition expenditure on limited-budget films), in subsection (2)—
 - (a) in paragraph (a) for “before 2nd July 2005” substitute “, if it is expenditure to which section 42(3) of that Act applies, before 1st October 2007”,
 - (b) after that paragraph insert—
 - “(aa) the first day of principal photography in relation to the film concerned is before 1st April 2006;”, and
 - (c) in paragraph (c) after “1997” insert “but before 1st January 2007”.
- (2) In section 139 of ITTOIA 2005 (certified master versions: production expenditure on limited-budget films), in subsection (1)—
 - (a) in paragraph (aa) (requirement that film is completed) (inserted by paragraph 30 of Schedule 3) after “period” insert “and before 1st January 2007”, and
 - (b) for paragraph (b) (requirement that expenditure incurred before 2nd July 2005) substitute—
 - “(b) the first day of principal photography was before 1st April 2006;”.
- (3) In section 140 of that Act (certified master versions: acquisition expenditure on limited-budget films), in subsection (1)—
 - (a) in paragraph (aa) (requirement that film is completed) (inserted by paragraph 30 of Schedule 3), after “period” insert “and before 1st January 2007”,
 - (b) in paragraph (c) (requirement that expenditure incurred before 2nd July 2005) for “2nd July 2005” substitute “1st October 2007”, and
 - (c) after that paragraph insert—
 - “(ca) the first day of principal photography was before 1st April 2006;”.
- (4) The Treasury may by order amend any of the enactments amended by subsections (1) to (3), so as to substitute for a date inserted by or under this section a later date.
- (5) The amendments made by subsection (1) have effect in relation to claims made under section 42 of F(No 2)A 1992 on or after 2nd July 2005.
- (6) The amendments made by subsections (2) and (3) have effect in relation to deductions made under section 139 or 140 of ITTOIA 2005 on or after 2nd July 2005.

Restrictions on relief

59 Restrictions on relief for production and acquisition expenditure

- (1) Schedule 3 (films: restrictions on relief for production and acquisition expenditure) has effect.

Status: This is the original version (as it was originally enacted).

(2) In that Schedule—

- (a) Part 1 imposes restrictions on the circumstances in which relief may be obtained;
- (b) Part 2 imposes restrictions on the amount of relief which may be obtained;
- (c) Part 3 makes minor and consequential amendments;
- (d) Part 4 contains interpretation provisions.

Deferred income agreements

60 Deferred income agreements which exist when relief claimed

(1) This section applies where—

- (a) in relation to a trade or business (“the relevant trade”), a company (“C”) makes a claim on or after 2nd December 2004 under section 42 of F(No 2)A 1992 for a deduction for a relevant period in respect of expenditure relating to a film (“the claim”), and
- (b) when the claim is made, one or more deferred income agreements in respect of the film exist to which C is or has been a party and which C entered into on or after 2nd December 2004.

(2) C is to be treated for corporation tax purposes as receiving, in the relevant period in respect of which the claim is made, an amount of income from the relevant trade equal to the amount of excess relief.

(3) If, at the time immediately after the end of the 15 year period, C is carrying on the relevant trade, C is to be treated for the purposes of section 40B of F(No 2)A 1992 (allocation of expenditure to periods) as incurring at that time relevant film expenditure of an amount equal to the amount of excess relief.

(4) The “amount of excess relief” is the amount given by the following formula—

$$D \times \left(1 - \frac{T1}{T2} \right)$$

where—

D is the amount which C is entitled to deduct under section 42 of F(No 2)A 1992 by virtue of the claim;

T1 is the number of days in the 15 year period;

T2 is the number of days in the period which begins with the operative date and ends with the final deferral date.

(5) The “15 year period” means the period of 15 years which begins with the operative date.

(6) The “operative date” means—

- (a) where the claim is only in respect of expenditure incurred on the acquisition of the original master version of the film, the date of that acquisition, and
- (b) in any other case, the date upon which the film is completed.

(7) The “final deferral date” means—

- (a) the last date of deferral in relation to the deferred income agreement mentioned in subsection (1)(b) (see section 61), or

Status: This is the original version (as it was originally enacted).

- (b) where there is more than one such agreement, the date which is the latest of the last dates of deferral in relation to those agreements.
- (8) “Relevant film expenditure” means expenditure of a revenue nature on the production or acquisition of the original master version of the film.
- (9) Any income received in a relevant period by virtue of this section is in addition to any other income received in that period.
- (10) This section is deemed to have come into force on 2nd December 2004.

61 Meaning of “deferred income agreement in respect of a film”

- (1) For the purposes of section 60, a “deferred income agreement in respect of a film” means an agreement which satisfies condition A or condition B.
- (2) Condition A is that the agreement (whether or not it supplements or varies another agreement)—
 - (a) guarantees to any person an amount of income arising from the exploitation of the film, and
 - (b) has the effect that the last date of deferral is a date after the end of the 15 year period.
- (3) Condition B is that the agreement—
 - (a) supplements or varies another agreement (“the earlier agreement”) which guarantees to any person an amount of income arising from the exploitation of the film, and
 - (b) has the effect that the last date of deferral is a date which is after the end of the 15 year period and after the last date of deferral (if any) in relation to the earlier agreement.
- (4) The “last date of deferral” means the last date upon which an amount of the guaranteed income will or may arise.
- (5) It does not matter whether any of the agreements mentioned in subsection (2) or (3) existed before 2nd December 2004.
- (6) For the purposes of this section—
 - (a) “agreement” means an agreement or series of agreements, and
 - (b) an agreement “guarantees” an amount of income if the agreement, or any part of it, is designed to secure the receipt of that amount (or at least that amount) of income.
- (7) This section is deemed to have come into force on 2nd December 2004.

62 Deferred income agreements entered into after relief claimed

- (1) This section applies where—
 - (a) on or after 2nd December 2004, a company (“C”) enters into a deferred income agreement in respect of a film in the course of carrying on a trade or business (“the relevant trade”), and
 - (b) before C entered into the agreement, a claim was made under section 42 of F(No 2)A 1992, in relation to the relevant trade, for a deduction for a relevant period in respect of expenditure relating to the film (“the claim”).

Status: This is the original version (as it was originally enacted).

- (2) C is to be treated for corporation tax purposes as receiving, in the relevant period in which C entered into the deferred income agreement, an amount of income from the relevant trade equal to the net excess relief.
- (3) If, at the time immediately after the end of the 15 year period, C is carrying on the relevant trade, C is to be treated for the purposes of section 40B of F(No 2)A 1992 (allocation of expenditure to periods) as incurring at that time relevant film expenditure of an amount equal to the net excess relief.
- (4) The “net excess relief” is the amount of excess relief reduced (but not below nil) by the recovered amount (if any).
- (5) The “amount of excess relief” is the amount given by the following formula—

$$D \times \left(1 - \frac{T1}{T2} \right)$$

where—

D is the amount which there was an entitlement to deduct under section 42 of F(No 2)A 1992 by virtue of the claim;

T1 is the number of days in the 15 year period;

T2 is the number of days in the period which begins with the operative date and ends with the final deferral date.

- (6) The “recovered amount” means the total of—
- (a) the amount (if any) treated under section 60 as income received by C from the relevant trade as a result of any application of that section in relation to the claim as a result of C’s entry into any deferred income agreement in respect of the film concerned, and
 - (b) the total of any amounts treated under this section as income received by C from the relevant trade as a result of any previous application of this section in relation to the claim as a result of C’s entry into any previous relevant agreements.
- (7) The “15 year period” means the period of 15 years which begins with the operative date.
- (8) The “operative date” means—
- (a) where the claim is only in respect of expenditure incurred on the acquisition of the original master version of the film, the date of that acquisition, and
 - (b) in any other case, the date upon which the film is completed.
- (9) For the purposes of this section—
- (a) “deferred income agreement in respect of a film” has the same meaning as it has for the purposes of section 60,
 - (b) the “final deferral date” means the last date of deferral in relation to the deferred income agreement mentioned in subsection (1)(a) (see section 61),
 - (c) “previous relevant agreement” means a deferred income agreement in respect of the film concerned which was entered into by C after the claim was made and before the entry into the deferred income agreement mentioned in subsection (1)(a), and
 - (d) “relevant film expenditure” means expenditure of a revenue nature on the production or acquisition of the original master version of the film.

- (10) It does not matter for the purposes of subsection (1) whether the claim was made before, or on or after, 2nd December 2004.
- (11) Any income received in a relevant period by virtue of this section is in addition to any other income received in that period.
- (12) This section is deemed to have come into force on 2nd December 2004.

63 Sections 60 to 62: supplementary

- (1) For the purposes of sections 60 to 62 a company is not to be regarded as entering into an agreement on or after 2nd December 2004 where the company entered into the agreement in pursuance of an obligation of the company which immediately before that date was an unconditional obligation.
- (2) In determining, for the purposes of subsection (1), whether an obligation in pursuance of which a company entered into an agreement was an unconditional obligation immediately before 2nd December 2004, the obligation is not to be regarded as a conditional obligation at that time by reason only that it was contingent on a condition the fulfilment of which was outside the control of the company.
- (3) For the purposes of this section and sections 60 to 62—
 - “film” is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985 (c. 21);
 - “original master version” is to be construed in accordance with section 43 of F(No 2)A 1992;
 - “relevant period” has the meaning given in section 40B of that Act.
- (4) For the purposes of sections 60 to 62 a film is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.
- (5) This section is deemed to have come into force on 2nd December 2004.

64 Transitional provision for years of assessment before the year 2005-06

- (1) Section 60 has effect, for income tax purposes, for the year 2004-05 and earlier years of assessment as if—
 - (a) in paragraph (a) of subsection (1), for “company” there were substituted “person”, and
 - (b) in subsection (2) for “corporation tax” there were substituted “income tax”.
- (2) Section 62 has effect, for income tax purposes, for the year 2004-05 and earlier years of assessment as if—
 - (a) in paragraph (a) of subsection (1), for “company” there were substituted “person”, and
 - (b) in subsection (2) for “corporation tax” there were substituted “income tax”.
- (3) Section 63 has effect, for income tax purposes, for the year 2004-05 and earlier years of assessment as if, in subsections (1) and (2), for “company” there were substituted “person”.
- (4) This section is deemed to have come into force on 2nd December 2004.

65 Corresponding provision in ITTOIA 2005

- (1) After section 142 of ITTOIA 2005 (when expenditure is incurred) insert—

“Deferred income agreements

142A Deferred income agreements which exist when deduction made

- (1) This section applies where—
- (a) in calculating the profits of a relevant period of a trade carried on by a person (“P”), a deduction is made under any of sections 138 to 140 in respect of expenditure relating to a film (“the relevant expenditure”), and
 - (b) when the deduction is made, one or more deferred income agreements in respect of the film exist to which P is or has been a party and which P entered into on or after 2nd December 2004.
- (2) An amount equal to the amount of excess relief is brought into account as a receipt in calculating the profits of the trade of the relevant period in respect of which the deduction was made.
- (3) If, at the time immediately after the end of the 15 year period, P is carrying on the trade, P is to be treated for the purposes of section 135 (normal rules for allocating expenditure to periods) as incurring at that time relevant film expenditure of an amount equal to the amount of excess relief.
- (4) The “amount of excess relief” is the amount given by the following formula—

$$D \times \left(1 - \frac{T1}{T2} \right)$$

where—

- D is the amount of the deduction allowed;
- T1 is the number of days in the 15 year period;
- T2 is the number of days in the period which begins with the operative date and ends with the final deferral date.
- (5) The “15 year period” means the period of 15 years which begins with the operative date.
- (6) The “operative date” means—
- (a) where the relevant expenditure is acquisition expenditure only, the date of the acquisition in question, and
 - (b) in any other case, the date upon which the film is completed.
- (7) The “final deferral date” means—
- (a) the last date of deferral in relation to the deferred income agreement mentioned in subsection (1)(b) (see section 142B), or
 - (b) where there is more than one such agreement, the date which is the latest of the last dates of deferral in relation to those agreements.
- (8) “Relevant film expenditure” means production or acquisition expenditure relating to the original master version of the film.

142B Meaning of “deferred income agreement in respect of a film”

- (1) For the purposes of section 142A, a “deferred income agreement in respect of a film” means an agreement which satisfies condition A or condition B.
- (2) Condition A is that the agreement (whether or not it supplements or varies another agreement)—
 - (a) guarantees to any person an amount of income arising from the exploitation of the film, and
 - (b) has the effect that the last date of deferral is a date after the end of the 15 year period.
- (3) Condition B is that the agreement—
 - (a) supplements or varies another agreement (“the earlier agreement”) which guarantees to any person an amount of income arising from the exploitation of the film, and
 - (b) has the effect that the last date of deferral is a date which is after the end of the 15 year period and after the last date of deferral (if any) in relation to the earlier agreement.
- (4) The “last date of deferral” means the last date upon which an amount of the guaranteed income will or may arise.
- (5) It does not matter whether any of the agreements mentioned in subsection (2) or (3) existed before 2nd December 2004.
- (6) For the purposes of this section—
 - (a) “agreement” means an agreement or series of agreements, and
 - (b) an agreement “guarantees” an amount of income if the agreement, or any part of it, is designed to secure the receipt of that amount (or at least that amount) of income.

142C Deferred income agreements entered into after deduction made

- (1) This section applies where—
 - (a) on or after 2nd December 2004, a person (“P”) enters into a deferred income agreement in respect of a film in the course of carrying on a trade, and
 - (b) before P entered into the agreement, event A or event B occurred in relation to the trade in respect of expenditure relating to the film (“the relevant expenditure”).
- (2) Event A occurs in relation to a trade in respect of expenditure relating to a film when a deduction is made under any of sections 138 to 140 in respect of that expenditure in calculating the profits of the trade of a relevant period (“the deduction”).
- (3) Event B occurs in relation to a trade in respect of expenditure relating to a film when a claim is made under section 42 of F(No 2)A 1992, in relation to the trade, for a deduction for a relevant period in respect of that expenditure (“the claim”).

Status: This is the original version (as it was originally enacted).

It does not matter whether the claim is made before, or on or after, 2nd December 2004.

- (4) An amount equal to the net excess relief is brought into account as a receipt in calculating the profits of the trade of the relevant period in which P entered into the deferred income agreement.
- (5) If, at the time immediately after the end of the 15 year period, P is carrying on the trade, P is to be treated for the purposes of section 135 (normal rules for allocating expenditure to periods) as incurring at that time relevant film expenditure of an amount equal to the net excess relief.
- (6) The “15 year period” means the period of 15 years which begins with the operative date.
- (7) The “operative date” means—
 - (a) where the relevant expenditure is acquisition expenditure only, the date of the acquisition in question, and
 - (b) in any other case, the date upon which the film is completed.
- (8) “Deferred income agreement in respect of a film” has the same meaning as it has for the purposes of section 142A.
- (9) “Relevant film expenditure” means production or acquisition expenditure relating to the original master version of the film.

142D Meaning of the “net excess relief”

- (1) For the purposes of section 142C the “net excess relief” is the amount of excess relief reduced (but not below nil) by the recovered amount (if any).
- (2) The “amount of excess relief” is the amount given by the following formula—

$$D \times \left(1 - \frac{T1}{T2} \right)$$

where—

D is—

- (a) in a case where event A has occurred, the amount of the deduction allowed, and
- (b) in a case where event B has occurred, the amount which there was an entitlement to deduct under section 42 of F(No 2)A 1992 by virtue of the claim;

T1 is the number of days in the 15 year period;

T2 is the number of days in the period which begins with the operative date and ends with the final deferral date.

- (3) The “final deferral date” means the last date of deferral in relation to the deferred income agreement mentioned in section 142C(1)(a) (see section 142B).
- (4) In a case where event A has occurred, the “recovered amount” means the total of—

Status: This is the original version (as it was originally enacted).

- (a) the amount (if any) treated under section 142A as a receipt of the trade as a result of any application of that section in relation to the deduction as a result of P's entry into any deferred income agreement in respect of the film concerned, and
 - (b) the total of any amounts treated under section 142C as receipts of the trade as a result of any previous application of that section in relation to the deduction as a result of P's entry into any previous relevant agreements.
- (5) In a case where event B has occurred, the "recovered amount" means the total of—
- (a) the amount (if any) treated under section 60 of the Finance Act 2005 as a receipt of the trade as a result of any application of that section in relation to the claim as a result of P's entry into any deferred income agreement in respect of the film concerned,
 - (b) the total of any amounts treated under section 62 of the Finance Act 2005 as receipts of the trade as a result of any application of that section in relation to the claim as a result of P's entry into any previous relevant agreements, and
 - (c) the total of any amounts treated under section 142C as receipts of the trade as a result of any previous application of that section in relation to the claim as a result of P's entry into any previous relevant agreements.
- (6) "Previous relevant agreement" means a deferred income agreement in respect of the film concerned which was entered into by P—
- (a) in the case of event A, after the deduction was made and before the entry into the deferred income agreement mentioned in section 142C(1)(a), and
 - (b) in the case of event B, after the claim was made and before the entry into that deferred income agreement.

142E Sections 142A to 142D: time of entry into an agreement

- (1) For the purposes of sections 142A to 142D a person is not to be regarded as entering into an agreement on or after 2nd December 2004 where the person entered into the agreement in pursuance of an obligation of the person which immediately before that date was an unconditional obligation.
 - (2) In determining, for the purposes of subsection (1), whether an obligation in pursuance of which a person entered into an agreement was an unconditional obligation immediately before 2nd December 2004, the obligation is not to be regarded as a conditional obligation at that time by reason only that it was contingent on a condition the fulfilment of which was outside the control of the person."
- (2) The amendment made by this section has effect for the year 2005-06 and subsequent years of assessment.

Status: This is the original version (as it was originally enacted).

Companies benefited by film relief: exit charges

66 When a chargeable event occurs

- (1) A chargeable event occurs in relation to a company (“C”) where an exit event occurs in relation to C and the following conditions are satisfied—
 - (a) C was a film rights company immediately before the time of the exit event, and
 - (b) C or another company—
 - (i) had made a relevant claim for a deduction under section 42 of F(No 2)A 1992 (relief for production or acquisition expenditure on a film) before that time, or
 - (ii) first makes such a claim at or after that time.
- (2) C is a “film rights company” at a particular time if, at that time, it—
 - (a) is party to an agreement which guarantees it an amount of income arising from the exploitation of a film (“the film”),
 - (b) carries on a trade or business which consists of or includes the exploitation of films or the receipt of income derived from films (“the relevant trade”), and
 - (c) is a 75% subsidiary of the principal company of a group of companies (“the principal company”).
- (3) An agreement “guarantees” C an amount of income if the agreement, or any part of it, is designed to secure the receipt by C of that amount (or at least that amount) of income.
- (4) An “exit event” occurs in relation to C on each occasion, on or after 2nd December 2004, when one of the following happens—
 - (a) C ceases to be a 75% subsidiary of the principal company (“exit event X”);
 - (b) C ceases to be within the charge to corporation tax (“exit event Y”);
 - (c) there is a relevant disposal by C at an undervalue within the meaning given by section 68 (“exit event Z”).
- (5) A “relevant claim” means a claim in respect of expenditure relating to the film and, for the purposes of subsection (1)(b)(i), it does not matter whether the claim was made before, or on or after, 2nd December 2004.
- (6) For the purposes of sections 67 to 71—

“the guaranteed income agreement” means the agreement mentioned in subsection (2)(a),

“the guaranteed income” means the income arising from the exploitation of the film—

 - (a) whose receipt by C that agreement, or any part of it, is designed to secure, and
 - (b) which would, if it were received by C at a time when it is carrying on the relevant trade, be income from that trade,

and references to expressions which are defined in this section are to be construed in accordance with this section.
- (7) For the purposes of this section—

“agreement” means an agreement or series of agreements; and

“film” is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985 (c. 21),

and an agreement, or part of an agreement, is to be regarded as designed to secure the receipt by C of an amount (or at least an amount) if it was designed to secure the receipt of that amount (or at least that amount) by another person and C is that person's successor under the agreement.

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

67 Consequences of a chargeable event: exit event X or Y

(1) This section applies where a chargeable event occurs in relation to C by virtue of section 66 and the exit event in question is exit event X or Y.

(2) C is to be treated for corporation tax purposes as receiving, immediately before the exit event, an amount of income from the relevant trade equal to the chargeable amount.

(3) Where the exit event is exit event X, an amount equal to the chargeable amount is to be treated for corporation tax purposes as a loss of the relevant trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits) to the exit accounting period.

(4) But that loss may only be set off against income which—

(a) derives directly from the rights to guaranteed income under the guaranteed income agreement, and

(b) is brought into account by C for the relevant trade after the exit event, and, in particular, may not be set off against the income which C is treated as receiving under subsection (2) by virtue of the exit event.

(5) The “chargeable amount” is the value immediately before the exit event of the rights to guaranteed income under the guaranteed income agreement calculated in accordance with section 70.

(6) Any income received in, or losses brought forward to, an accounting period by virtue of this section are in addition to any other income received in, or losses brought forward to, that period.

(7) In this section “exit accounting period” means the accounting period of C in which the exit event occurs.

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

68 Exit event Z: a relevant disposal at an undervalue

(1) This section applies for the purposes of—

section 66(4)(c) (definition of exit event Z),
section 69 (consequences of a chargeable event: exit event Z), and
section 70 (valuation of the “disposed rights”).

(2) A “relevant disposal” means a disposal by C directly or indirectly to a third party (“TP>”) of rights to guaranteed income under the guaranteed income agreement.

(3) The “disposed rights” are the rights to guaranteed income under the guaranteed income agreement which are the object of the relevant disposal.

Status: This is the original version (as it was originally enacted).

- (4) A relevant disposal is at an undervalue where the amount of the disposal consideration (“V1”) is less than the value of the disposed rights immediately before the disposal calculated in accordance with section 70 (“V2”).
- (5) It does not matter whether the disposed rights are disposed of alone or as part of a larger disposal.
- (6) Where the disposed rights are disposed of as part of a larger disposal, the amount of the disposal consideration for the larger disposal which is attributable to the relevant disposal is to be determined on such basis as is just and reasonable.
- (7) In this section—
 - “disposal” means any surrender, giving up, assignment or other disposal;
 - “disposal consideration”, in relation to a disposal, means the amount of the consideration for the disposal brought into account as income of the relevant trade by C at the date of that disposal;
 - “third party” means a person who is not the principal company or a 75% subsidiary of the principal company.
- (8) This section is deemed to have come into force on 2nd December 2004.

69 Consequences of a chargeable event: exit event Z

- (1) This section applies where a chargeable event occurs in relation to C by virtue of section 66 and the exit event in question is exit event Z.
- (2) C is to be treated for corporation tax purposes as receiving, immediately before the exit event, an amount of income from the relevant trade equal to the chargeable amount.
- (3) Where TP is within the charge to corporation tax, an amount equal to the chargeable amount is to be treated for corporation tax purposes as a loss of TP’s trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits) to the accounting period in which TP acquires the disposed rights.
- (4) Where TP is within the charge to income tax, an amount equal to the chargeable amount is to be treated for income tax purposes as a loss of TP’s trade brought forward under section 385 of ICTA (carry-forward against subsequent profits) to the year of assessment in which TP acquires the disposed rights.
- (5) But a loss brought forward under subsection (3) or (4) may only be set off against income which derives directly from the disposed rights.
- (6) The “chargeable amount” is the difference between V1 and V2.
- (7) Any income received in, or losses brought forward to, an accounting period by virtue of this section are in addition to any other income received in, or losses brought forward to, that period.
- (8) This section is deemed to have come into force on 2nd December 2004.

70 Valuation of the “rights to guaranteed income” and “disposed rights”

- (1) For the purposes of section 67, the value immediately before the exit event of the rights to guaranteed income under the guaranteed income agreement is calculated as follows—

Status: This is the original version (as it was originally enacted).

Step 1

Find the amount of each payment of income which at that time the guaranteed income agreement is designed to secure is received by C but which at that time has not been brought into account for the relevant trade by C (“RI”).

Step 2

For each payment find the day for payment which the agreement is designed to secure (“the payment day”).

Step 3

For each payment find the number of days in the period (“P”) which—
(a) begins with the day on which the exit event occurs, and
(b) ends with the payment day.

Step 4

Calculate the net present value of each payment (“NPVRI”) by applying the following formula—

$$\frac{RI}{(1 + T)^i}$$

where—

T is the temporal discount rate, and
i is the number of days in P divided by 365.

Step 5

Add together each amount of NPVRI determined under step 4.

- (2) For the purposes of section 68, in relation to a relevant disposal, the value of the disposed rights immediately before the disposal is calculated as follows—

Step 1

Find the amount of each payment of income which at that time the guaranteed income agreement is designed to secure is received by C by virtue of the disposed rights but which at that time has not been brought into account for the relevant trade by C (“DI”).

Step 2

For each payment find the day for payment which the agreement is designed to secure (“the payment day”).

Step 3

For each payment find the number of days in the period (“P”) which—
(a) begins with the day on which the relevant disposal occurs, and
(b) ends with the payment day.

Step 4

Calculate the net present value of each payment (“NPVDI”) by applying the following formula—

$$\frac{DI}{(1 + T)^i}$$

where—

T is the temporal discount rate, and
i is the number of days in P divided by 365.

Step 5

Status: This is the original version (as it was originally enacted).

Add together each amount of NPVDI determined under step 4.

- (3) For the purposes of this section the “temporal discount rate” is 3.5% or such other rate as may be specified by regulations made by the Treasury.
- (4) Regulations under subsection (3) may make such provision as is mentioned in subsection (3)(b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).
- (5) Subsection (5) of that section (power of Inland Revenue to specify rate by order in certain circumstances) applies in relation to regulations under subsection (3) as it applies in relation to regulations under that section.
- (6) This section is deemed to have come into force on 2nd December 2004.

71 Meaning of “company” and related terms

- (1) For the purposes of sections 66 to 70, two companies are deemed to be members of a group of companies if—
 - (a) one is the 75% subsidiary of the other, or
 - (b) both are 75% subsidiaries of a third company.
- (2) For those purposes, the “principal company” of a group of companies means a company—
 - (a) which is not a 75% subsidiary of another company to whom group relief would be available under section 402 of ICTA if it were to make a group claim under that section in respect of any trading losses surrendered by C, and
 - (b) to whom group relief would be available under section 402 of ICTA if it were to make a group claim under that section in respect of any trading losses surrendered by C.
- (3) For the purposes of sections 66 to 70 and this section—
 - (a) a company is to be treated as a 75% subsidiary of another company if it would be such a subsidiary of that company for the purposes of section 402 of ICTA (surrender of relief between members of group), and
 - (b) “company” has the same meaning as it has for the purposes of that section.
- (4) This section is deemed to have come into force on 2nd December 2004.

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

Status: This is the original version (as it was originally enacted).

- (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,”.
- (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

Status: This is the original version (as it was originally enacted).

- (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.
- (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),

Status: This is the original version (as it was originally enacted).

- (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.

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.

Status: This is the original version (as it was originally enacted).

- (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
 - (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—

Status: This is the original version (as it was originally enacted).

- (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.
- (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

Status: This is the original version (as it was originally enacted).

- (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.

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.

Status: This is the original version (as it was originally enacted).

- (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) 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.

Status: This is the original version (as it was originally enacted).

(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.”

(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
 - (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.

Status: This is the original version (as it was originally enacted).

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.”.
- (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

Status: This is the original version (as it was originally enacted).

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) (debits 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 (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 1st January 2007,
- 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.

Status: This is the original version (as it was originally enacted).

- (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, and
 - (d) the total value of the capital market investments made under that capital market arrangement is at least £50 million.
- (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, and
 - (b) whose liabilities representing debtor relationships are owed wholly, or substantially wholly, to a note-issuing 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;

Status: This is the original version (as it was originally enacted).

“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.

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,
 - (ii) that any such election must be made in the company’s first company tax return after the passing of this Act and has effect in relation to every period of account of the company beginning on or after 1st January 2005, and
 - (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).

Status: This is the original version (as it was originally enacted).

- (4) The regulations may make different provision for different descriptions of company.
- (5) Regulations under this section may—
 - (a) in the case of—
 - (i) regulations made before 1st January 2006, or
 - (ii) the first regulations under this section (if made on or after that date),
 make provision having effect for periods of account beginning on or after 1st January 2005;
 - (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—
 - “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.

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—

Status: This is the original version (as it was originally enacted).

“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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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,
 - (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—

Status: This is the original version (as it was originally enacted).

- (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—
 - (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

Status: This is the original version (as it was originally enacted).

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.

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).

Status: This is the original version (as it was originally enacted).

- (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 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.

Status: This is the original version (as it was originally enacted).

- (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.
- (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—

Status: This is the original version (as it was originally enacted).

- (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;“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—

Status: This is the original version (as it was originally enacted).

“(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.”

(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—

Status: This is the original version (as it was originally enacted).

“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)).”.

- (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)”.

Status: This is the original version (as it was originally enacted).

- (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.
- (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.