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SCHEDULES

SCHEDULE 2

TRANSITIONALS AND SAVINGS ETC

PART 5

LOSSES ON DISPOSAL OF SHARES

Disposals of new shares

- 27 (1) In relation to new shares issued before 1 April 2010, section 74(2) applies with the omission of “This is subject to section 87(3).”
- (2) In this paragraph “new shares” is to be read in accordance with section 87.

Qualifying trading companies

- 28 (1) In relation to shares issued before 17 March 2004, section 78(2)(a) applies with the omission of sub-paragraph (iv) and the “and” immediately before it.
- (2) In relation to shares issued before 7 March 2001, section 78(4)(b) applies with the substitution for “at the relevant time” of “throughout the relevant period”.
- (3) For the purposes of sub-paragraph (2), shares that were issued—
- (a) after 5 April 1998, but
 - (b) before 7 March 2001,
- are treated as having been issued on or after 7 March 2001 in respect of any part of the relevant period which falls on or after that date.
- (4) In relation to shares issued before 6 April 1998, section 78 applies with the substitution for subsections [F1(2) to (4)] of—
- “(2) Condition A is that the company either—
- (a) is a trading company on the date of the disposal, or
 - (b) has ceased to be a trading company at a time which is not more than 3 years before that date and has not since that time been an excluded company or an investment company.
- (3) Condition B is that the company either—
- (a) has been a trading company for a continuous period of 6 years ending on that date or at that time, or
 - (b) has been a trading company for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company or an investment company.

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- (4) Condition C is that none of the shares in the company has been listed on a recognised stock exchange at any time in the period—
- (a) beginning with the incorporation of the company or, if later, 12 months before the date on which the shares in question were subscribed for, and
 - (b) ending with the date on which the shares are disposed of.

^{F2}(5)”

Textual Amendments

- F1** Words in Sch. 2 para. 28(4) substituted (with effect in accordance with s. 38(3) of the amending Act) by [Finance Act 2020 \(c. 14\), s. 38\(2\)\(b\)\(iv\)](#)
- F2** Words in Sch. 2 para. 28(4) omitted (with effect in accordance with s. 38(3) of the amending Act) by virtue of [Finance Act 2020 \(c. 14\), s. 38\(2\)\(b\)\(iv\)](#)

The trading requirement

- 29 (1) In relation to shares issued before 6 April 2007, section 79 applies with the following modifications—
- (a) the omission of subsection (2),
 - (b) in subsection (5), the omission of paragraph (d)(ii) and the “or” immediately before it, and
 - (c) the omission of subsection (6).
- (2) In relation to shares issued before 6 April 2000, section 79 applies with the substitution for the definition of “research and development” in subsection (7) of—
- ““research and development” means any activity which is intended to result in a patentable invention (within the meaning of the Patents Act 1977) or in a computer program.”
- (3) Section 79 does not apply in relation to shares issued before 6 April 1998.

Ceasing to meet trading requirement because of administration or receivership

- 30 (1) In relation to shares issued before 17 March 2004, section 80 applies with the following modifications—
- (a) in subsection (1), the omission of “merely” and the substitution for “the company or any of its subsidiaries” of “its”,
 - (b) in subsection (2)(b), the omission of “concerned”,
 - (c) in subsection (3)(a), the omission of “or any of its subsidiaries”,
 - (d) in subsection (3)(b), the omission of “or any of its subsidiaries”, and
 - (e) in subsection (4), the omission of “is”, in the second place where it occurs.
- (2) In relation to an administration order the petition for which was presented before 15 September 2003, section 80(2) applies with the substitution for paragraph (a) of—
- “(a) the making of the order in question, and”.
- (3) In relation to shares issued before 21 March 2000, section 80 applies with the omission of subsections (1) and (2).

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- (4) Section 80 does not apply in relation to shares issued before 6 April 1998.

The control and independence requirement

- 31 (1) In relation to shares issued before 6 April 2007, section 81(1)(a) applies with the omission of “of the company”.
- (2) In relation to shares issued before 21 March 2000, section 81 applies with the following modifications—
- (a) the substitution for subsections (1) to (3) of—
- “(1) The control element of the requirement is that—
- (a) the company must not control (or together with any person connected with it control) another company or have a 51% subsidiary, and
- (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a).
- (2) The independence element of the requirement is that—
- (a) the company must not be under the control of another company (or another company and any other person connected with that company) or be a 51% subsidiary of another company, and
- (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a).
- (3) This section is subject to section 87(3); and nothing in subsection (1) prevents the company having one or more qualifying subsidiaries.”,
- and
- (b) in subsection (4) the omission of the definition of “arrangements” and, in the definition of “control”, the omission of “, in subsection (1)(a),” and the words “(but see section 1124 for the meaning of “control” in subsection (2) (a)(ii))”.
- (3) Section 81 does not apply in relation to shares issued before 6 April 1998.

The qualifying subsidiaries requirement

- 32 Section 82 does not apply in relation to shares issued before 6 April 1998.

The property managing subsidiaries requirement

- 33 Section 83 does not apply in relation to shares issued before 17 March 2004.

The gross assets requirement

- 34 (1) In relation to shares issued before 6 April 2006, section 84 applies with the substitution in subsections (1) and (2)—
- (a) of “ £15 million ” for “£7 million”, and
- (b) of “ £16 million ” for “£8 million”.

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- (2) For the purposes of sub-paragraph (1) shares issued on or after 6 April 2006 to a company which subscribed for them before 22 March 2006 are treated as having been issued before 6 April 2006.
- (3) Section 84 does not apply in relation to shares issued before 6 April 1998.

The unquoted status requirement

- 35 (1) In relation to shares issued before 7 March 2001, section 85 applies with the following modifications—
- (a) the substitution for subsection (1) of—

“(1) The unquoted status requirement is that the company must be an unquoted company throughout the relevant period.”,
 - (b) the substitution for subsection (2) of—

“(2) If the company is an unquoted company at the time when any shares are issued, it is not treated for the purposes of this section as ceasing to be an unquoted company in relation to those shares at any subsequent time merely because any shares, stocks, debentures or other securities of the company are at that time—

 - (a) listed on an exchange designated by an order made for the purposes of section 184(3)(b) of ITA 2007, or
 - (b) dealt in by any means designated by an order made for the purposes of section 184(3)(c) of ITA 2007,

if the order was made after the shares were issued.”, and
 - (c) in subsection (3) the substitution for the definition of “arrangements” of—

““the relevant period” means the period—

 - (a) beginning with the incorporation of the company or, if later, the date one year before the issue of the shares in question, and
 - (b) ending with the date of the disposal.”
- (2) For the purposes of sub-paragraph (1)(a) and (c), shares that were issued—
- (a) after 5 April 1998, but
 - (b) before 7 March 2001,
- are treated as having been issued on or after 7 March 2001 in respect of any part of the relevant period which falls on or after that date.
- (3) Section 85 does not apply in relation to shares issued before 6 April 1998.

Power to amend requirements by Treasury order

- 36 Section 86 does not apply in relation to shares issued before 6 April 1998.

Relief after an exchange of shares for shares in another company

- 37 (1) In relation to new shares issued before 1 April 2010, section 87 applies with the omission of subsection (3)(a).

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(2) In relation to new shares issued before 6 April 2007, section 87 applies with the substitution for subsection (1)(e) of—

“(e) before the issue of the new shares, the Commissioners for Her Majesty's Revenue and Customs have, on the application of the new company or the old company, notified that company that the exchange of shares—

(i) will be effected for genuine commercial reasons, and

(ii) will not form part of any such scheme or arrangement as is mentioned in section 137(1) of TCGA 1992.”

(3) Section 87 does not apply in relation to shares issued before 6 April 1998.

substitution of new shares for old shares

38 Section 88 does not apply in relation to shares issued before 6 April 1998.

Interpretation of Chapter

39 (1) In relation to shares issued before 1 April 2010, the definition of “investment company” in section 90(1) is to be read as including (so as to be within the meaning of the definition) a relevant savings bank.

(2) In relation to shares issued before 6 April 2010, the definition of “investment company” in section 151(1) of ITA 2007, as amended by Schedule 1 to this Act, is to be read as including (so as to be within the meaning of the definition) a relevant savings bank.

(3) In this paragraph a “relevant savings bank” means, subject to sub-paragraph (4), a savings bank or other bank for savings (other than any such bank that is a successor or further successor to a trustee savings bank for the purposes of the Trustee Savings Banks Act 1985).

(4) A savings bank or other bank for savings that is the holding company of a trading group is not a “relevant savings bank” for the purposes of this paragraph.

40 In relation to shares issued before 6 April 1998, section 90 applies with the following modifications—

(a) in the definition of “excluded company” in subsection (1), the substitution for “in land, in commodities or futures or in shares, securities or other financial instruments” of “in shares, securities, land, trades or commodity futures”,

(b) in subsection (6), the insertion after “excluded company” of “or is a non-UK resident”.

Meaning of “qualifying 90% subsidiary”

41 (1) This paragraph applies in relation to shares issued before 6 April 2007.

(2) Section 83 has effect in relation to a relevant time or a relevant period as if subsections (1A) to (1C) of section 190 of ITA 2007 (as applied for the purposes of the definition of “qualifying 90% subsidiary” by section 83(2) of this Act) were omitted.

(3) For the purposes of sub-paragraph (2)—

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- (a) a “relevant time” is any time relevant for the purposes of condition A in section 78(2) falling before 6 April 2007, and
 - (b) a “relevant period” is any period relevant for the purposes of condition B in section 78(3) ending before that date (but see also sub-paragraph (4)).
- (4) In the case of a period relevant for the purposes of condition B in section 78(3) that ends on or after 6 April 2007 but begins before that date, the part of the period falling before that date is a “relevant period” for the purposes of sub-paragraph (2).

Meaning of “qualifying subsidiary”

42 In relation to shares issued before 17 March 2004, section 191 of ITA 2007 (as applied by sections 79(7), 81(4), 82(2) and 84(4) of this Act) applies with the following modifications—

- (a) in subsection (1), the insertion at the end of “ and, except as provided by subsection (3), continue to be met until the time that is relevant for the purposes of section 78(2) of CTA 2010 ”,
- (b) in subsection (2), the substitution for paragraph (a) of—
 - “(a) the relevant company, or another of its subsidiaries, possesses at least 75% of the issued share capital of, and at least 75% of the voting power in, the subsidiary,”
 - “(aa) the relevant company, or another of its subsidiaries, would in the event of a winding up of the subsidiary, or in any other circumstances, be beneficially entitled to receive at least 75% of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary,”
 - “(ab) the relevant company, or another of its subsidiaries, is beneficially entitled to at least 75% of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary,”
- (c) in paragraph (c) of subsection (2), the substitution for “either of the conditions in paragraphs (a) and (b)” of “ any of the conditions in paragraphs (a), (aa), (ab) and (b) ”,
- (d) in subsection (3), the substitution for “any other company” of “ the relevant company ” and the substitution for the words from “the winding up or dissolution” to the end of that subsection of—
 - “(a) the winding up or dissolution is for genuine commercial reasons, and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
 - (b) the net assets, if any, of the subsidiary or, as the case may be, the relevant company are distributed to its members, or dealt with as bona vacantia, before the time that is relevant for the purposes of section 78(2) of CTA 2010 or, in the case of a winding up, the end (if later) of 3 years from the commencement of the winding up.”,
- (e) the omission of subsection (4),
- (f) in subsection (5), the substitution for “arrangements are in existence for” of “ of ” and the insertion after “another subsidiary” of “ within the continuous period that is relevant for the purposes of section 78(3) of CTA 2010 ”,

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- (g) in subsection (5)(a), the omission of “to be”,
- (h) in subsection (5)(b), the substitution for “is not to be” of “ not ”, and
- (i) after subsection (5), the insertion of—

“(6) The persons who are equity holders of a subsidiary, and the percentage of the assets of a subsidiary to which an equity holder would be entitled, are to be determined in accordance with Chapter 6 of Part 5 of CTA 2010, taking references in that Chapter to a winding up as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.”

Meaning of “excluded activities”

- 43 (1) In relation to shares issued before 6 April 2008, section 192 of ITA 2007 (as applied by section 79(7) of this Act) applies with the omission of the following—
- (a) in subsection (1), paragraphs (ia), (ib) and (ic), and
 - (b) in subsection (2), paragraphs (da), (db) and (dc).
- (2) In relation to shares issued before 7 March 2001, section 192(1) of ITA 2007 (as applied by section 79(7) of this Act) applies with the insertion after paragraph (c) of—
- “(ca) oil extraction activities (within the meaning of Part 8 of CTA 2010),”.

Excluded activities: wholesale and retail distribution

- 44 In relation to shares issued before 6 April 2007, section 193(5)(b) of ITA 2007 (as applied by section 79(7) of this Act) applies with the following modifications—
- (a) the insertion after “held” of “ by the company ”, and
 - (b) the substitution for “the trader” of “ a vendor ”.

Excluded activities: leasing of ships

- 45 (1) In relation to shares issued before 6 April 2007, section 194 of ITA 2007 (as applied by the definition of “non-qualifying activities” in section 79(7) of this Act) applies with the omission of subsection (7).
- (2) In relation to shares issued before 6 April 2004, section 194 of ITA 2007 (as applied by section 79(7) of this Act) applies with the following modifications—
- (a) in subsection (1), the substitution for “offshore installations” of “ oil rigs ”,
 - (b) in subsection (2), the substitution for “offshore installation” of “ oil rig ”, and
 - (c) in subsection (8), the insertion after “this section” of—
“oil rig” means any ship which is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971, ”.

Excluded activities: receipt of royalties and licence fees

- 46 (1) Sub-paragraph (3) applies, in the circumstances mentioned in sub-paragraph (2), for the purpose of modifying the effect of section 195 of ITA 2007 (as applied for the purposes of the definition of “excluded activities” by section 79(7) of this Act) in relation to a relevant time or a relevant period.

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- (2) Sub-paragraph (3) applies if—
 - (a) shares in or securities of a company (“the company”) were issued before 6 April 2007,
 - (b) immediately before that date—
 - (i) the right to exploit an intangible asset (“the asset”) was vested in the company or a subsidiary of it (in either case, whether alone or jointly with others), and
 - (ii) the asset was a relevant intangible asset,
 - (c) at any time on or after that date, an activity carried on by the company or a subsidiary of it would be an excluded activity by reason only of the receipt of royalties or licence fees attributable to the exploitation of the asset, and
 - (d) the activity would not be an excluded activity if the amendments made by Part 3 of Schedule 16 to FA 2007 had not been made.
 - (3) The activity is to be treated, in relation to those shares or securities, as not being an excluded activity at that time.
 - (4) For the purposes of sub-paragraph (1)—
 - (a) a “relevant time” is any time relevant for the purposes of condition A in section 78(2) falling on or after 6 April 2007, and
 - (b) a “relevant period” is any period relevant for the purposes of condition B in section 78(3) beginning on or after that date (but see also sub-paragraph (5)).
 - (5) In the case of a period that begins before 6 April 2007 but ends on or after that date, the part of the period falling on or after that date is a “relevant period” for the purposes of sub-paragraph (1).
 - (6) In sub-paragraph (2), “intangible asset” and “relevant intangible asset” have the same meanings as in section 195 of ITA 2007.
- 47 (1) This paragraph applies in relation to shares issued on or after 6 April 2000 but before 6 April 2007.
- (2) Section 79 has effect in relation to a relevant time or a relevant period as if the following modifications were made to section 195 of ITA 2007 (as applied for the purposes of the definition of “excluded activities” by section 79(7) of this Act)—
 - (a) in subsection (4), the substitution for paragraphs (a) and (b) of—
 - “(a) by the company carrying on the trade, or
 - (b) by a company which at all times during which it created the intangible asset was—
 - (i) the holding company of the company carrying on the trade, or
 - (ii) a qualifying subsidiary of that holding company.”,
 - (b) in subsection (6), the insertion of the following definition—
 - ““holding company” means a company that—
 - (a) has one or more 51% subsidiaries, but
 - (b) is not itself a 51% subsidiary of another company.”, and
 - (c) the omission of subsection (7).
 - (3) In a case where section 79 has effect as if the modifications in sub-paragraph (2) were made to section 195 of ITA 2007—

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- (a) section 79 of this Act applies with the omission of subsection (9), and
 - (b) section 88 applies with the omission of subsection (3).
- (4) For the purposes of sub-paragraph (2)—
- (a) a “relevant time” is any time relevant for the purposes of condition A in section 78(2) falling before 6 April 2007, and
 - (b) a “relevant period” is any period relevant for the purposes of condition B in section 78(3) ending before 6 April 2007 (but see also sub-paragraph (5)).
- (5) In the case of a period relevant for the purposes of condition B in section 78(3) that ends on or after 6 April 2007 but begins before that date, the part of the period falling before that date is a “relevant period” for the purposes of sub-paragraph (2).
- 48 In relation to shares issued before 6 April 2000, section 79 has effect as if, for the purposes of the definition of “excluded activities” in section 79(7), the following section was substituted for section 195 of ITA 2007—

“195 Excluded activities: receipt of royalties and licence fees

- (1) This section supplements section 192(1)(e) (receipt of royalties and licence fees).
- (2) A trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(e) as a result only of it consisting to a substantial extent in the receiving of royalties or licence fees if—
 - (a) the company carrying on the trade is engaged throughout the relevant period in—
 - (i) the production of films, or
 - (ii) the production of films and the distribution of films produced by it in the relevant period, and
 - (b) all royalties and licence fees received by it in the relevant period are in respect of films produced by it in that period or sound recordings in relation to such films or other products arising from such films.
- (3) A trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(e) as a result only of it consisting to a substantial extent in the receiving of royalties or licence fees if—
 - (a) the company carrying on the trade is engaged in research and development throughout the relevant period, and
 - (b) all royalties and licence fees received by it in the relevant period are attributable to research and development which it has carried out.
- (4) In this section “the relevant period” means the continuous period that is relevant for the purposes of section 78(3) of CTA 2010.”

Excluded activities: provision of services or facilities for another business

- 49 In relation to shares issued before 6 April 2007, section 199 of ITA 2007 (as applied by section 79(7) of this Act) applies with the following modifications—
- (a) in subsections (1) to (4), the substitution of “ trade ” for “business”, wherever it occurs, and
 - (b) in subsection (5) the substitution for paragraph (b) of—

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- “(b) references to a trade, in relation to the provider of the services or facilities, are to be read without regard to the definition of “trade” in section 989, and
- (c) “trade”, in relation to the other person, includes any business, profession or vocation”.

Meaning of a company being “in administration”

- 50 (1) Sub-paragraph (2) applies in relation to—
- (a) an administration order under Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) the petition for which was presented before 6 April 2007, or
 - (b) any corresponding order under the law of a country or territory outside the United Kingdom the proceedings for which were instituted before that date.
- (2) Section 252 of ITA 2007 (as it applies for the purposes of Chapter 5 of Part 4 of this Act) applies with the substitution for subsection (2) of—
- “(2) A company is “in administration” if—
- (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986, or
 - (b) there is in force in relation to it—
 - (i) an administration order under Part 3 of the Insolvency (Northern Ireland) Order 1989, or
 - (ii) any corresponding order under the law of a country or territory outside the United Kingdom.”
- (3) For the purposes of sub-paragraph (2), section 252 of ITA 2007 applies for the purposes of Chapter 5 of Part 4 of this Act in any case where—
- (a) it is applied by section 80(5) of this Act,
 - (b) it applies for the purposes of section 190 of ITA 2007 as applied by section 83(2) of this Act, or
 - (c) it applies for the purposes of section 191 of ITA 2007 as applied by section 79(7), 81(4), 82(2) or 84(4) of this Act.
- (4) In relation to an administration order under Part 2 of the Insolvency Act 1986 the petition for which was presented before 15 September 2003, section 252 of ITA 2007 (as applied by section 80(5) of this Act) applies with the substitution for subsection (2) of—
- “(2) A company is “in administration” if there is in force in relation to it—
- (a) an administration order under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989, or
 - (b) any corresponding order under the law of a country or territory outside the United Kingdom.”
- (5) Section 252 of ITA 2007 (as applied by section 80(5) of this Act) does not apply in relation to shares issued before 21 March 2000.

Application in relation to corresponding bonus shares

- 51 (1) For the purposes of this Part of this Schedule, if—

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- (a) any shares (“the original shares”) have been issued to a company before a particular date, or are treated under this paragraph as having been issued to the company before a particular date, and
- (b) any corresponding bonus shares are issued to the company on or after that date,

the bonus shares are treated as having been issued at the time the original shares were issued to the company or are treated as having been so issued.

- (2) In this paragraph “bonus shares” and “corresponding bonus shares” have the same meaning as in Chapter 5 of Part 4.

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