



# Finance Act 1989

## 1989 CHAPTER 26

### PART II

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

### CHAPTER I

#### GENERAL

##### *Income tax rates and allowances*

**<sup>F1</sup>30 Charge and rates of income tax for 1989-90.**

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**Textual Amendments**

**F1** Ss. 30-32 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

**<sup>F1</sup>31 Age allowance.**

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**Textual Amendments**

**F1** Ss. 30-32 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

**<sup>F1</sup>32 Operative date for PAYE.**

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*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

### Textual Amendments

**F1** Ss. 30-32 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 33 Married couples.

- (1) Sections 257 to 257F and 265 of the <sup>M1</sup>Taxes Act 1988, as inserted for the year 1990-91 and subsequent years by the Finance Act 1988, shall be amended as follows.
- (2) In section 257(1) for “£2,605” there shall be substituted “£2,785”.
- (3) In section 257(2) for “£3,180” there shall be substituted “£3,400”.
- (4) In section 257(3)—
- <sup>F2</sup>(a) .....
- (b) for “£3,310” there shall be substituted “£3,540”.
- (5) In section 257(5)—
- (a) for “£10,600” there shall be substituted “£11,400”, and
- <sup>F3</sup>(b) .....
- [<sup>F4</sup>(6) In section 257A(1) for “£1,490” there shall be substituted “£1,590”.]
- (7) In section 257A(2) for “£1,855” there shall be substituted “£1,985”.
- (8) In section 257A(3)—
- <sup>F5</sup>(a) .....
- (b) for “£1,895” there shall be substituted “£2,025”.
- (9) In section 257A(5)—
- (a) for “£10,600” there shall be substituted “£11,400”, and
- <sup>F6</sup>(b) .....
- (10) In sections <sup>F7</sup>. . . [<sup>F8</sup>257D(8) and] 265(3) after paragraph (b) there shall be inserted “or
- (c) on account of any payments to which section 593(2) or 639(3) applies.”.
- [<sup>F9</sup>(11) In section 257E(1)(b) for “80” there shall be substituted “75”.
- <sup>F9</sup>(12) In section 257E(2)(a) for “£3,180” there shall be substituted “£3,400”.
- <sup>F9</sup>(13) In section 257E(2)(b) for “£3,310” there shall be substituted “£3,540”.]

### Textual Amendments

- F2** S. 33(4)(a) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(c\)](#)
- F3** S. 33(5)(b) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(c\)](#)
- F4** S. 33(6) repealed (27.7.1999 with effect for the year 2000-2001 and subsequent years of assessment) by 1999 c. 16, s. 139, [Sch. 20 Pt. III\(3\)](#), note 2
- F5** S. 33(8)(a) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(c\)](#)

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- F6** S. 33(9)(b) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 1 para. 6(c)**
- F7** Words in s. 33(10) repealed (16.7.1992) by virtue of Finance (No. 2) Act 1992 (c. 48), ss. 20, 82, Sch. 5 para. 10, **Sch. 18 Pt. VII(1)**
- F8** Words in s. 33(10) repealed (27.7.1999 with effect for the year 2000-2001 and subsequent years of assessment) by virtue of 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, note 2
- F9** S. 33(11)-(13) repealed (27.7.1999 with effect for the year 2000-2001 and subsequent years of assessment) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, note 2

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

- C1** See Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 257 for 1989–1990 and see Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), 257–257F for 1990–1991

**Marginal Citations**

- M1** 1988 c. 39.

*Corporation tax rates etc.*

**34 Charge and rate of corporation tax for financial year 1989.**

Corporation tax shall be charged for the financial year 1989 at the rate of 35 per cent.

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

- C2** For earlier years see Table K, Vol. 1

**35 Corporation tax: small companies.**

- (1) For the financial year 1989—
- the small companies' rate shall be 25 per cent., and
  - the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.
- (2) In section 13(3) of that Act (limits of marginal relief), in paragraphs (a) and (b)—
- for “£100,000” there shall be substituted “£150,000”, and
  - for “£500,000” there shall be substituted “£750,000”.
- (3) Subsection (2) above shall have effect for the financial year 1989 and subsequent financial years; and where by virtue of that subsection section 13 of the Taxes Act 1988 has effect with different relevant maximum amounts in relation to different parts of a company's accounting period, then for the purposes of that section those parts shall be treated as if they were separate accounting periods and the profits and basic profits of the company for that period shall be apportioned between those parts.

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

- C3** For earlier years see Table K, Vol. 1
- C4** For earlier years see Table L, Vol. 1

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*Receipts basis etc.*

**F1036 Schedule E: revised Cases.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

**F1037 Schedule E: assessment on receipts basis.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

**F1038 Schedule E: unpaid emoluments.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

**F1039 Schedule E: unremitted emoluments.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

**F1040 Schedule E: emoluments already paid.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

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**F10 41 Schedule E: pensions etc.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

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

**C5** S. 41 extended (3.5.1994) by [1994 c. 9](#), s. 139(3)

**F10 42 Schedule E: supplementary.**

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**Textual Amendments**

**F10** Ss. 36-42 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

**F11 43 Schedule D: computation**

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**Textual Amendments**

**F11** S. 43 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 339, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F12 44 Companies with investment business and insurance companies: computation**

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**Textual Amendments**

**F12** S. 44 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 340, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F13 45 PAYE: meaning of payment.**

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**Textual Amendments**

**F13** S. 45 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

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### *Interest*

#### 46 Relief for interest.

For the year 1989-90 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

#### <sup>F14</sup>47 Close company loans: business expansion scheme.

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##### Textual Amendments

**F14** S. 47 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

#### <sup>F15</sup>48 Close company loans: material interest.

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##### Textual Amendments

**F15** S. 48 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

### *Benefits in kind*

#### 49 Car benefits.

(1) In Schedule 6 to the Taxes Act 1988 (taxation of directors and others in respect of cars) for Part I (tables of flat rate cash equivalents) there shall be substituted—

#### “PART I

#### TABLES OF FLAT RATE CASH EQUIVALENTS

#### table A

#### CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND HAVING A CYLINDER CAPACITY

Cylinder capacity of car in cubic centimetres	Age of car at end of relevant year of assessment	
	Under 4 years	4 years or more
1400 or less	£1,400	£950
More than 1400 but not more than 2000	£1,850	£1,250
More than 2000	£2,950	£1,950

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table B

CARS WITH AN ORIGINAL MARKET VALUE UP TO  
£19,250 AND NOT HAVING A CYLINDER CAPACITY

Original market value of car	Age of car at end of relevant year of assessment	
	Under 4 years	4 years or more
Less than £6,000	£1,400	£950
£6,000 or more but less than £8,500	£1,850	£1,250
£8,500 or more but not more than £19,250	£2,950	£1,950

table B

CARS WITH AN ORIGINAL MARKET VALUE OF MORE THAN £19,250

Original market value of car	Age of car at end of relevant year of assessment	
	Under 4 years	4 years or more
More than £19,250 but not more than £29,000	£3,850	£2,600
More than £29,000	£6,150	£4,100 <sup>2</sup>

(2) This section shall have effect for the year 1989-90 and subsequent years of assessment.

<sup>F16</sup>**50 Security assets and services.**

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**Textual Amendments**

**F16** Ss. 50-52 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

<sup>F16</sup>**51 Assets used partly for security.**

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**Textual Amendments**

**F16** Ss. 50-52 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

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**<sup>F16</sup>52 Security: supplementary.**

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**Textual Amendments**

**F16** Ss. 50-52 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**53 Employees earning £8,500 or more and directors.**

<sup>F17</sup>(1) .....

<sup>F17</sup>(2) .....

<sup>F17</sup>(a) .....

<sup>F17</sup>(b) .....

<sup>F17</sup>(c) .....

<sup>F17</sup>(d) .....

<sup>F17</sup>(e) .....

(f) the words “ employment to which Chapter II of Part V applies ” shall be substituted for the words from “director’s” to “section167)” in [<sup>F18</sup>section 418(3)(a)] of that Act;

<sup>F17</sup>(g) .....

**Textual Amendments**

**F17** S. 53 repealed (except s. 53(2)(f) so far as relating to s. 418(3) of ICTA) (6.4.2003) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F18** Words in s. 53(2)(f) substituted (6.4.2003) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 159](#) (with Sch. 7)

*Medical insurance*

**[<sup>F19</sup>54 Relief.**

(1) This section applies where—

- (a) on or after 6th April 1990 an individual makes a payment in respect of a premium under a contract of private medical insurance (whenever issued),
- (b) the contract meets the requirement in subsection (2) below as to the person or persons insured,
- (c) at the time the payment is made the contract is an eligible contract,
- (d) the individual making the payment does not make it out of resources provided by another person for the purpose of enabling it to be made, and
- (e) the individual making the payment is not entitled to claim any relief or deduction in respect of it under any other provision of the Tax Acts.

(2) The requirement mentioned in subsection (1)(b) above is that the contract insures—



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- (a) an individual who at the time the payment is made is aged 60 or over and resident in the United Kingdom,
- (b) individuals each of whom at that time is aged 60 or over and resident in the United Kingdom, or
- (c) two individuals who are married to each other at that time, at least one of whom is aged 60 or over at that time, and each of whom is resident in the United Kingdom at that time.

[ In a case where—

- <sup>F20</sup>(2A) (a) a payment is made in respect of a premium under a contract at a time when the contract meets the requirement in subsection (2) above by virtue of paragraph (c) of that subsection, and
- (b) a payment is made under the same contract at a time after one of the individuals has died and when the contract does not (apart from this subsection) meet the requirement in subsection (2) above by virtue only of the fact that the surviving spouse is not aged 60 or over at the time,

for the purposes of subsection (2) above in its application to the contract the surviving spouse shall be deemed to be aged 60 or over at the time mentioned in paragraph (b) above.]

- (3) If the payment is made by an individual who at the time it is made is resident in the United Kingdom (whether or not he is the individual or one of the individuals insured by the contract) [<sup>F21</sup>the individual shall be entitled to relief under this subsection in respect of the payment; and (except where subsections (4) to (6) below apply) relief under this subsection shall be given—
- (a) in accordance with subsections (3A) to (3C) below, and
  - (b) only on a claim made for the purpose.]

- [ Where an individual is entitled to relief under subsection (3) above in respect of one
- <sup>F22</sup>(3A) or more payments made in a given year of assessment, the amount of his liability for that year of assessment to income tax on his total income shall be the amount to which he would be liable apart from this section less whichever is the smaller of—
- (a) the amount found under subsection (3B) below, and
  - (b) the amount which reduces his liability to nil.

- (3B) The amount referred to in subsection (3A)(a) above is an amount found by—
- (a) taking the amount of the payment referred to in subsection (3A) above or (as the case may be) the aggregate amount of the payments there referred to, and
  - (b) finding an amount equal to tax on the amount taken under paragraph (a) above at the basic rate for the year of assessment concerned.

- (3C) In determining for the purposes of subsection (3A) above the amount of incomers on whom he would be liable apart from this section, no account shall be taken of—
- (a) any income tax reduction under Chapter I of Part VII of the Taxes Act 1988 or under section 347B of that Act;
  - (b) any income tax reduction under section 353(1A) of the Taxes Act 1988;
  - (c) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 of the Taxes Act 1988 or by way of a credit under section 790(1) of that Act;
  - (d) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.]

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- (4) In such cases and subject to such conditions as the Board may specify in regulations, relief under subsection (3) above shall be given in accordance with subsections (5) and (6) below.
- (5) An individual who is entitled to such relief in respect of a payment may deduct and retain out of it an amount equal to income tax on it at the basic rate for the year of assessment in which it is made.
- (6) The person to whom the payment is made—
- (a) shall accept the amount paid after deduction in discharge of the individual's liability to the same extent as if the deduction had not been made, and
  - (b) may, on making a claim [<sup>F23</sup>in accordance with regulations], recover from the Board an amount equal to the amount deducted.
- (7) The Treasury may make regulations providing that in circumstances prescribed in the regulations—
- (a) an individual who has made a payment in respect of a premium under a contract of private medical insurance shall cease to be and be treated as not having been entitled to relief under subsection (3) above; and
  - (b) he or the person to whom the payment was made (depending on the terms of the regulations) shall account to the Board for tax from which relief has been given on the basis that the individual was so entitled.
- (8) Regulations under subsection (7) above may include provision adapting or modifying the effect of any enactment relating to income tax in order to secure the performance of any obligation imposed under paragraph (b) of that subsection.
- (9) In this section—
- (a) references to a premium, in relation to a contract of insurance, are to any amount payable under the contract to the insurer, and
  - (b) references to an individual who is resident in the United Kingdom at anytime include references to an individual who is at that time performing duties which are treated by virtue of section 132(4)(a) of the Taxes Act 1988 as performed in the United Kingdom.]

#### **Textual Amendments**

- F19** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))
- F20** S. 54(2A) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 4(2) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 4(1)**
- F21** Words and paras. (a)(b) substituted for words in s. 54(3) (3.5.1994 with effect in relation to payments on or after 6.4.1994) by 1994 c. 9, s. 83, **Sch. 10 para. 2(2)(4)**
- F22** S. 54(3A)-(3C) inserted (3.5.1994 with effect in relation to payments on or after 6.4.1994) by 1994 c. 9, s. 83, **Sch. 10 para. 2(3)(4)**
- F23** Words in s. 54(6)(b) inserted (29.4.1996) by 1996 c. 8, s. 129(2)

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

- C6** S. 54 restricted (31.7.1997 with effect for the year 1997-1998 and subsequent years of assessment) by 1997 c. 58, s. 17(1)-(5) (with s. 3(3))
- C7** For regulations see S.I. 1989/2387 and S.I. 1989/2389 (in Part III Vol. 5 under "Private medical insurance")

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**[<sup>F24</sup>55 Eligible contracts.**

(1) This section has effect to determine whether a contract is at a particular time (the relevant time) an eligible contract for the purposes of section 54 above.

(2) A contract is an eligible contract at the relevant time if—

(a) it was entered into by an insurer who at the time it was entered into was a qualifying insurer and was approved by the Board for the purposes of this section,

(b) the period of insurance under the contract does not exceed one year(commencing with the date it was entered into),

[ at the relevant time the contract satisfies the conditions set out in <sup>F25</sup>(ba) subsection (2A) below,

(bb) the contract is not one in the case of which subsection (2D) below applies,]

(c) the contract is not connected with any other contract at the relevant time and has not been connected with any other contract at any time since it was entered into, [<sup>F26</sup>and]

(d) no benefit has been provided by virtue of the contract other than an approved benefit, [<sup>F27</sup>and

(e) the contract meets one or more of the three conditions set out below.]

[ The conditions referred to in subsection (2)(ba) above are that—

<sup>F28</sup>(2A) (a) the contract either provides indemnity in respect of all or any of the costs of all or any of the treatments, medical services and other matters for the time being specified in regulations made by the Treasury, or in addition to providing indemnity of that description provides cash benefits falling within rules for the time being so specified,

(b) the contract does not confer any right other than such a right as is mentioned in paragraph (a) above or is for the time being specified in regulations made by the Treasury,

(c) the premium under the contract is reasonable, and

(d) the contract satisfies such other requirements as are for the time being specified in regulations made by the Treasury.

(2B) In a case where—

(a) at the relevant time the contract confers a material right, or more than one such right, but

(b) the total cost to the insurer of providing benefits in pursuance of the material right or (as the case may be) in pursuance of all the material rights would not exceed the prescribed sum,

the contract shall not thereby be regarded as failing to satisfy at the relevant time the condition set out in subsection (2A)(b) above.

(2C) For the purposes of subsection (2B) above a material right is a right which—

(a) is not a right such as is mentioned in subsection (2A)(a) above or such as is for the time being specified in regulations made under subsection (2A)(b) above, and

(b) is not a right to a cash benefit.

(2D) This subsection applies in the case of a contract (the main contract) if—

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- (a) at least one other contract is entered into which is a contract (a collateral contract) under which a benefit is provided in consideration of the insured's entering into the main contract, and
- (b) the cost to the insurer of fulfilling his obligations under the collateral contract (or, if there is more than one collateral contract, of fulfilling his obligations under all of them) exceeds the prescribed sum.]

<sup>F29</sup> [ The first condition is that the contract is certified by the Board under section 56 below (3) at the relevant time.

<sup>F29</sup>(4) The second condition is that, at the time the contract was entered into, it conformed with a standard form certified by the Board as a standard form of eligible contract.

<sup>F29</sup>(5) The third condition is that, at the time the contract was entered into, it conformed with a form varying from a standard form so certified in no other respect than by making additions—

- (a) which were (at the time the contract was entered into) certified by the Board as compatible with an eligible contract when made to that standard form, and
- (b) which (at that time) satisfied any conditions subject to which the additions were so certified.

<sup>F29</sup>(6) Where a contract is varied, and the relevant time falls after the time the variation takes effect, subsections (1) to (5) above shall have effect as if “entered into” read “varied” in each place where it occurs in subsections (4) and (5) above.]

(7) For the purposes of this section a contract is connected with another contract at any time if—

- (a) they are simultaneously in force at that time,
- (b) either of them was entered into with reference to the other, or with a view to enabling the other to be entered into on particular terms, or with a view to facilitating the other being entered into on particular terms, and
- (c) the terms on which either of them was entered into would have been significantly less favourable to the insured if the other had not been entered into.

(8) For the purposes of this section each of the following is a qualifying insurer—

- (a) an insurer lawfully carrying on in the United Kingdom business of any of the classes specified in Part I of Schedule 2 to the <sup>M2</sup>Insurance Companies Act 1982;
- (b) an insurer not carrying on business in the United Kingdom but carrying on business in another member State and being either a national of a member State or a company or partnership formed under the law of any part of the United Kingdom or another member State and having its registered office, central administration or principal place of business in a member State.

(9) For the purposes of this section a benefit is an approved benefit if it is provided in pursuance of a right of a description

<sup>F30</sup> [ mentioned in subsection (2A)(a) above, or (a)

- (b) for the time being specified in regulations made under subsection (2A)(b) above.]

<sup>F31</sup> [ For the purposes of this section a benefit is also an approved benefit if it is not a cash (10) benefit and—

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- (a) it is a single benefit provided otherwise than as mentioned in subsection (9) above and the cost to the insurer of providing it does not exceed the prescribed sum, or
  - (b) it is one of a number of benefits provided otherwise than as mentioned in subsection (9) above and the total cost to the insurer of providing the benefits does not exceed the prescribed sum.
- (11) In this section the reference to a premium, in relation to a contract of insurance, is to any amount payable under the contract to the insurer.
- (12) For the purposes of this section the prescribed sum is £30.
- (13) The Treasury may by order substitute for the sum for the time being specified in subsection (12) above such sum as may be specified in the order; and any such substitution shall have effect in relation to cases where the relevant time falls on or after such date as is specified in the order.]]

#### Textual Amendments

- F24** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))
- F25** S. 55(2)(ba)(bb) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(2)**
- F26** Word in s. 55(2)(c) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(3)(a)**
- F27** S. 55(2)(e) and the word “and” immediately preceding it repealed (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, ss. 83, 258, **Sch. 10 para. 5(3)(b), Sch. 26 Pt. V(3)**, Note 2
- F28** S. 55(2A)-(2D) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(4)**
- F29** S. 55(3)-(6) repealed (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, ss. 83, 258, **Sch. 10 para. 5(5), Sch. 26 Pt. V(3)**, Note 2
- F30** Paras. (a)(b) substituted for words in s. 55(9) (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(6)**
- F31** S. 55(10)-(13) inserted (3.5.1994 with effect as mentioned in Sch. 10 para. 5(8) of the amending Act) by 1994 c. 9, s. 83, **Sch. 10 para. 5(7)**

#### Marginal Citations

- M2** 1982 c.50.

#### [<sup>F32</sup>56 Certification of contracts.

- (1) The Board shall certify a contract under this section if it satisfies the conditions set out in subsection (3) below; and the certification shall be expressed to take effect from the time the conditions are satisfied, and shall take effect accordingly.
- (2) The Board shall revoke a certification of a contract under this section if it comes to their notice that the contract has ceased to satisfy the conditions set out in subsection (3) below; and the revocation shall be expressed to take effect from the time the conditions ceased to be satisfied, and shall take effect accordingly.
- (3) The conditions referred to above are that—

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- (a) the contract either provides indemnity in respect of all or any of the costs of all or any of the treatments, medical services and other matters for the time being specified in regulations made by the Treasury, or in addition to providing indemnity of that description provides cash benefits falling within rules for the time being so specified,
  - (b) the contract does not confer any right other than such a right as is mentioned in paragraph (a) above or is for the time being specified in regulations made by the Treasury,
  - (c) the premium under the contract is in the Board's opinion reasonable, and
  - (d) the contract satisfies such other requirements as are for the time being specified in regulations made by the Treasury.
- (4) The certification of a contract by the Board under this section shall cease to have effect if the contract is varied; but this is without prejudice to the application of the preceding provisions of this section to the contract as varied.
- (5) Where the Board refuse to certify a contract under this section, or they revoke a certification, an appeal may be made to the Special Commissioners by—
- (a) the insurer, or
  - (b) any person who (if the policy were certified) would be entitled to relief under section 54 above.
- (6) Where a contract is certified under this section, or a certification is revoked or otherwise ceases to have effect, any adjustments resulting from the certification or from its revocation or ceasing to have effect shall be made.
- (7) Subsection (6) above applies where a certification or revocation takes place on appeal as it applies in the case of any other certification or revocation.
- (8) In this section the reference to a premium, in relation to a contract of insurance, is to any amount payable under the contract to the insurer.]

#### **Textual Amendments**

**F32** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))

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

**C8** For regulations see **S.I. 1989/2389** (in Part III Vol. 5 under "Private medical insurance")

### [<sup>F33</sup>**57** **Medical insurance: supplementary.**

- (1) The Board may by regulations—
- (a) provide that a claim under section 54(3) or (6)(b) above shall be made in such form and manner, shall be made at such time, and shall be accompanied by such documents, as may be prescribed;
  - <sup>F34</sup>(aa) [ make provision for and with respect to appeals against a decision of an officer of the Board or the Board with respect to a claim under section 54(6)(b) above;]
  - (b) make provision, in relation to payments in respect of which a person is entitled to relief under section 54 above, for the giving by insurers in such

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circumstances as may be prescribed of certificates of payment in such form as may be prescribed to such persons as may be prescribed;

- (c) provide that a person who provides (or has at any time provided) insurance under contracts of private medical insurance shall comply with any notice which is served on him by the Board and which requires him within a prescribed period to make available for the Board's inspection documents (of a prescribed kind) relating to such contracts;
- (d) provide that persons of such a description as may be prescribed shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about contracts of private medical insurance;
- (e) make provision with respect to the approval of insurers for the purposes of section 55 above and the withdrawal of approval for the purposes of that section;
- (f) make provision for and with respect to appeals against decisions of the Board with respect to the giving or withdrawal of approval of insurers for the purposes of section 55 above;
- (g) make provision with respect to the certification by the Board of standard forms of eligible contract and variations from standard forms of eligible contract certified by them;
- (h) make provision for and with respect to appeals against decisions of the Board with respect to the certification of standard forms of eligible contractor variations from standard forms of eligible contract certified by them;
- (i) provide that certification, or the revocation of a certification, under section 56 above shall be carried out in such form and manner as may be prescribed;
- (j) make provision with respect to appeals against decisions of the Board with respect to certification or the revocation of certification under section 56 above;
- (k) make provision generally as to administration in connection with sections 54 to 56 above.

<sup>F35</sup>(2) .....

(3) The following provisions of the Taxes Management Act 1970, namely—

- <sup>F36</sup>(a) [ section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to (10) of that Act;]
- (b) section 30 (tax repaid in error etc.) [<sup>F37</sup>apart from subsection (1B)],
- (c) [<sup>F38</sup>section 86] (interest), and
- (d) section 95 (incorrect return or accounts),

[<sup>F39</sup>shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable by virtue of section 54(6)(b) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid as respects a chargeable period as a relief which was not due.]

<sup>F40</sup>(3A) [ In the application of section 86 of the Taxes Management Act 1970 by virtue of subsection (3) above in relation to sums due and payable by virtue of an assessment made under section 29(1)(c) or 30 of that Act, as applied by that subsection, the relevant date—

- (a) in a case where the person falling within section 54(6) above has made any interim claim, within the meaning of regulations made under subsection (1)

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- and section 54(4) above, as respects some part of the year of assessment for which the assessment is made, is 1st January in that year of assessment; and
- (b) in any other case, is the later of the following dates, that is to say—
- (i) 1st January in the year of assessment for which the assessment is made; or
  - (ii) the date of the making of the payment by the Board which gives rise to the assessment.]
- (4) In sections <sup>F41</sup> . . . 257D(8) and 265(3) of the Taxes Act 1988 after paragraph (c) there shall be inserted
- (d) on account of any payments to which section 54(5) of the Finance Act 1989 applies”.
- (5) In subsection (1) above—
- “eligible contract” has the meaning given by section 55 above, and
- “prescribed” means prescribed by or, in relation to form, under the regulations.]

#### **Textual Amendments**

- F33** Ss. 54-57 repealed (31.1.1997 with effect as mentioned in Sch. 8 Pt. II(2), note of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)** (with s. 3(3))
- F34** S. 57(1)(aa) inserted (29.4.1996) by 1996 c. 8, s. 129(3)
- F35** S. 57(2) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 60(c)**
- F36** S. 57(3)(a) substituted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(a)**
- F37** Words in s. 57(3)(b) inserted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(b)**
- F38** Words in s. 57(3)(c) substituted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(c)**
- F39** Words in s. 57(3) substituted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(2)(d)**
- F40** S. 57(3A) inserted (29.4.1996 with effect as mentioned in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 132, **Sch. 18 para. 12(3)**
- F41** Words in s. 57(4) repealed (16.7.1992) by virtue of [Finance \(No. 2\) Act 1992 \(c. 48\)](#), ss. 20, 82, **Sch. 5 para. 10, Sch. 18 Pt. VII(1)**

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

- C9** See [S.I. 1989/2387](#)

### *Charities*

#### **58 Payroll deduction scheme.**

- (1) In section 202(7) of the Taxes Act 1988 (which limits to £240 the deductions attracting relief) for “£240” there shall be substituted “£480”.
- (2) This section shall have effect for the year 1989-90 and subsequent years of assessment.



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<sup>F42</sup>59 .....

**Textual Amendments**

**F42** S. 59 repealed (28.7.2000 with effect as mentioned in s. 41(9) of the amending Act) by 2000 c. 17, ss. 41(7), 156, **Sch. 40 Pt. II(1)**, note 3

**60 British Museum and Natural History Museum.**

(1) In subsection (1) of section 507 of the Taxes Act 1988 (which gives tax exemption to the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission) after paragraph (b) there shall be inserted—

- “(c) the Trustees of the British Museum;
- (d) the Trustees of the British Museum (Natural History);” and subsection (2) of that section (which gives partial tax exemption to those Trustees) shall cease to have effect.

(2) In section 339(9) of that Act, for the words from “the Trustees”(where those words first occur) to “History) and” there shall be substituted the words “each of the bodies mentioned in section 507, and in subsections (1) to (5) above includes”.

<sup>F43</sup>(3) .....

(4) Subsection (1) above shall apply in relation to accounting periods ending on or after 14th March 1989, and [<sup>F44</sup>subsection (2)] above shall apply to payments due on or after that day.

**Textual Amendments**

**F43** S. 60(3) repealed (1.5.1995 with effect as mentioned in s. 74(2), **Sch. 29 Pt. VIII(8)** of the amending Act) by 1995 c. 4, ss. 74(1), 162, **Sch. 17 Pt. III para. 25, Sch. 29 Pt. VIII(8)**

**F44** Words in s. 60(4) substituted (1.5.1995 with effect as mentioned in s. 74(2) of the amending Act) by 1995 c. 4, s. 74, **Sch. 17 Pt. III para. 25**

*Profit-related pay, share schemes etc.*

[<sup>F45</sup>61 **Profit-related pay.**

Schedule 4 to this Act (which amends the provisions of the Taxes Act 1988 relating to profit-related pay) shall have effect.]

**Textual Amendments**

**F45** S. 61 repealed (19.3.1997 with effect as mentioned in Sch. 18 Pt. VI(3), notes 1, 2 of the amending Act) by 1997 c. 16, ss. 61(2)(3), 113, **Sch. 18 Pt. VI(3)**

<sup>F46</sup>62 **Savings-related share option schemes.**

.....

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**Textual Amendments**

**F46** S. 62 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

<sup>F47</sup> **63 Profit sharing schemes.**

.....

**Textual Amendments**

**F47** S. 63 repealed (*having effect for the year 1991-92 and subsequent years of assessment*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 123, **Sch. 19 Pt.V** Note 6.

<sup>F48</sup> **64 Share option and profit sharing schemes: shares of consortium member.**

.....

**Textual Amendments**

**F48** S. 64 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

**65 Employee share schemes: material interest.**

In Schedule 9 to the Taxes Act 1988 the following paragraph shall be inserted after paragraph 39—

**Shares subject to an employee benefit trust**

- “40 (1) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (3) below applies in relation to him.
- (2) In this paragraph “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8.
- (3) This sub-paragraph applies in relation to an individual if at any time on or after 14th March 1989—
- (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,
- has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company.

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- (4) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.”

**F49 66 Priority share allocations for employees etc.**

**Textual Amendments**

**F49** S. 66 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1)**, s. 723, **Sch. 8 Pt. 1** (with **Sch. 7**)

*Employee share ownership trusts*

**67 Tax relief.**

- (1) This section applies where—
- (a) a company expends a sum in making a payment by way of contribution to the trustees of a trust which is a qualifying employee share ownership trust at the time the sum is expended,
  - (b) at that time, the company or a company which it then controls has employees who are eligible to benefit under the terms of the trust deed,
  - (c) at that time the company is resident in the United Kingdom,
  - (d) before the expiry of the expenditure period the sum is expended by the trustees for one or more of the qualifying purposes, and
  - (e) before the end of the claim period a claim for relief under this section is made.
- (2) In such a case the sum—
- (a) shall be deducted in computing for the purposes of Schedule D the [<sup>F50</sup>profits] of a trade carried on by the company, or
  - (b) if the company is an investment company or a company in the case of which section 75 of the Taxes Act 1988 applies by virtue of section 76 of that Act, shall be treated as expenses of management.
- (3) For the purposes of subsection (1)(b) above, the question whether one company is controlled by another shall be construed in accordance with section 840 of the Taxes Act 1988.
- (4) For the purposes of subsection (1)(d) above each of the following is a qualifying purpose—
- (a) the acquisition of shares in the company which established the trust;
  - (b) the repayment of sums borrowed;
  - (c) the payment of interest on sums borrowed;
  - (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
  - (e) the meeting of expenses.
- (5) For the purposes of subsection (1)(d) above the expenditure period is the period of nine months beginning with the day following the end of the period of account in which

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the sum is charged as an expense of the company, or such longer period as the Board may allow by notice given to the company.

- (6) For the purposes of subsection (1)(e) above the claim period is the period of two years beginning with the day following the end of the period of account in which the sum is charged as an expense of the company.
- (7) For the purposes of this section the trustees of an employee share ownership trust shall be taken to expend sums paid to them in the order in which the sums are received by them (irrespective of the number of companies making payments).

#### Textual Amendments

**F50** Words in s. 67(2)(a) substituted (31.7.1998) by 1998 c. 36, s. 46(3), **Sch. 7 para. 3**

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

**C10** See **Finance Act 1990 (c. 29)** ss.31–40—*.roll-over relief for disposal of assets to employee share ownership trusts*

**C11** S. 67 excluded (10.7.2003) by **Finance Act 2003 (c. 14), s. 142(1)**

## 68 Principal charges to tax.

- (1) This section applies where a chargeable event (within the meaning of section 69 below) occurs in relation to the trustees of an employee share ownership trust.
- (2) In such a case—
- (a) the trustees shall be treated as receiving, when the event occurs, [<sup>F51</sup>income of an amount that] is equal to the chargeable amount (within the meaning of section 70 below),
  - [<sup>F52</sup>(b) that income shall be chargeable to income tax for the year of assessment in which the event occurs,
  - (ba) the tax so chargeable shall be charged on the full amount of the income the trustees are treated as receiving in the year of assessment [<sup>F53</sup>, and]
  - (bb) the trustees are liable for any tax so chargeable, ]<sup>F54</sup> ...
  - <sup>F55</sup>(c) .....
- (3) If the whole or any part of the tax assessed on the trustees is not paid before the expiry of the period of six months beginning with the day on which the assessment becomes final and conclusive, a notice of liability to tax under this subsection may be served on a qualifying company and the tax or the part unpaid (as the case may be) shall be payable by the company on service of the notice.
- (4) Where a notice of liability is served under subsection (3) above—
- (a) any interest which is due on the tax or the part (as the case may be) and has not been paid by the trustees, and
  - (b) any interest accruing due on the tax or the part (as the case may be) after the date of service,
- shall be payable by the company.
- (5) Where a notice of liability is served under subsection (3) above and any amount payable by the company (whether on account of tax or interest) is not paid by the company before the expiry of the period of three months beginning with the date of

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service, the amount unpaid may be recovered from the trustees (without prejudice to the right to recover it instead from the company).

- (6) For the purposes of this section each of the following is a qualifying company—
- (a) the company which established the employee share ownership trust;
  - (b) any company falling within subsection (7) below.
- (7) A company falls within this subsection if, before it is sought to serve a notice of liability on it under subsection (3) above—
- (a) it has paid a sum to the trustees, and
  - (b) the sum has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.

#### Textual Amendments

- F51** Words in s. 68(2)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 407\(a\)](#) (with [Sch. 2](#))
- F52** S. 68(2)(b)(ba)(bb) substituted for s. 68(2)(b) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 407\(b\)](#) (with [Sch. 2](#))
- F53** Word in s. 68(2)(ba) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 28\(3\)\(a\)\(7\)](#)
- F54** Words in s. 68(2)(bb) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 28\(3\)\(b\)\(7\), Sch. 26 Pt. 3\(15\)](#)
- F55** S. 68(2)(c) repealed (with effect in relation to payments made on or after 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 28\(2\)\(a\)\(5\), Sch. 26 Pt. 3\(15\)](#)

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

- C12** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

## 69 Chargeable events.

- (1) For the purposes of section 68 above each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) the transfer of securities by the trustees, if the transfer is not a qualifying transfer;
  - (b) the transfer of securities by the trustees to persons who are at the time of the transfer beneficiaries under the terms of the trust deed, if the terms on which the transfer is made are not qualifying terms;
  - (c) the retention of securities by the trustees at the expiry of the [<sup>F56</sup>qualifying period] beginning with the date on which they acquired them;
  - (d) the expenditure of a sum by the trustees for a purpose other than a qualifying purpose.
- [<sup>F57</sup>(e) where—
- (i) the trustees make a qualifying transfer within subsection (3AA) below for a consideration, and
  - (ii) they do not, during the period specified in subsection (5A) below, expend a sum of not less than the amount of that consideration for one or more qualifying purposes,
- the expiry of that period.]

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- (2) For the purposes of subsection (1)(a) above a transfer is a qualifying transfer if it is made to a person who at the time of the transfer is a beneficiary under the terms of the trust deed.
- (3) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—
- (a) it is made to the trustees of a scheme which at the time of the transfer is a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988, and
  - (b) it is made for a consideration which is not less than the price the securities might reasonably be expected to fetch on a sale in the open market.
- [<sup>F58</sup>(3AA) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—
- (a) it is a transfer of relevant shares made to the trustees of the plan trust of [<sup>F59</sup>a share incentive] plan,
  - (b) the plan is approved under [<sup>F60</sup>Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003] when the transfer is made, and
  - (c) the consideration (if any) for which the transfer is made does not exceed the market value of the shares.
- (3AB) For the purpose of determining whether a transfer by the trustees is a qualifying transfer within subsection (3AA) above, where on or after 21st March 2000—
- (a) the trustees transfer or dispose of part of a holding of shares (whether by way of a qualifying transfer or otherwise), and
  - (b) the holding includes any relevant shares,
- the relevant shares shall be treated as transferred or disposed of before any other shares included in that holding.
- For this purpose “ holding ” means any number of shares of the same class held by the trustees, growing or diminishing as shares of that class are acquired or disposed of.
- (3AC) For the purposes of subsections (3AA) and (3AB) above—
- “ market value ” has the same meaning as [<sup>F61</sup>it has for the purposes of the SIP code (see paragraph 92 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003)]; and
- “ relevant shares ” means—
- (i) shares that are held by the trustees of the employee share ownership trust at midnight on 20th March 2000, and
  - (ii) shares purchased by those trustees with original funds after that time.
- (3AD) For the purposes of subsection (3AC) above—
- (a) “ original funds ” means any money held by the trustees of the employee share ownership trust in a bank or building society account at midnight on 20th March 2000, and
  - (b) any payment made by the trustees after that time (whether to acquire shares or otherwise) shall be treated as made out of original funds (and not out of money received after that time) until those funds are exhausted.]
- <sup>F62</sup>[(3A) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if it is made by way of exchange in circumstances mentioned in section 85(1) of the Capital Gains Tax Act 1979 or section 135(1) of the Taxation of Chargeable Gains Act 1992.]
- (4) For the purposes of subsection (1)(b) above a transfer of securities is made on qualifying terms if—

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- (a) all the securities transferred at the same time [<sup>F63</sup>other than those transferred on a transfer such as is mentioned in subsection (4ZA) below] are transferred on similar terms,
- (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed [<sup>F64</sup>by virtue of a rule which conforms with paragraph 4(2), (3) or (4) of Schedule 5 to this Act] when the transfer is made, and
- (c) securities are transferred to all such [<sup>F65</sup>persons] who have accepted.

[<sup>F66</sup>(4ZA) For the purposes of subsection (1)(b) above a transfer of securities is also made on qualifying terms if—

- (a) it is made to a person exercising a right to acquire shares, and
- (b) that right was obtained in accordance with the provisions of [<sup>F67</sup>an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of the Income Tax (Earnings and Pensions) Act 2003)]—
  - (i) which was established by, or by a company controlled by, the company which established the trust, and
  - (ii) which is approved under [<sup>F68</sup>Schedule 3 to that Act], and
- (c) that right is being exercised in accordance with the provisions of that scheme, and
- (d) the consideration for the transfer is payable to the trustees.]

[<sup>F69</sup>(4A) For the purposes of subsection (1)(c) above the qualifying period is—

- (a) seven years, in the case of trusts established on or before the day on which the Finance Act 1994 was passed;
- (b) twenty years, in the case of other trusts;

and for this purpose a trust is established when the deed under which it is established is executed.]

(5) For the purposes of subsection (1)(d) [<sup>F70</sup>or (e)] above each of the following is a qualifying purpose—

- (a) the acquisition of shares in the company which established the trust;
- (b) the repayment of sums borrowed;
- (c) the payment of interest on sums borrowed;
- (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
- (e) the meeting of expenses.

[<sup>F71</sup>(5A) The period referred to in paragraph (e) of subsection (1) above is the period—

- (a) beginning with the qualifying transfer mentioned in that paragraph, and
- (b) ending nine months after the end of the period of account in which that qualifying transfer took place.

For this purpose the period of account means the period of account of the company that established the employee share ownership trust.]

(6) For the purposes of subsection (4) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.

(7) In ascertaining for the purposes of this section whether particular securities are retained, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (8) For the purposes of this section trustees—
- (a) acquire securities when they become entitled to them (subject to the exceptions in subsection (9) below);
  - (b) transfer securities to another person when that other becomes entitled to them;
  - (c) retain securities if they remain entitled to them.
- (9) The exceptions are these—
- (a) if securities are issued to trustees in exchange in circumstances mentioned in section [F72]135(1) of the Taxation of Chargeable Gains Act 1992], they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged;
  - (b) if trustees become entitled to securities as a result of a reorganisation, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent (construing “reorganisation” and “original shares” in accordance with section [F72]126] of that Act).
- (10) If trustees agree to take a transfer of securities, for the purposes of this section they shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (11) If trustees agree to transfer securities to another person, for the purposes of this section the other person shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (12) For the purposes of this section the following are securities—
- (a) shares;
  - (b) debentures.

#### Textual Amendments

- F56** Words in s. 69(1)(c) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(2)**
- F57** S. 69(1)(e) inserted (28.7.2000) by 2000 c. 17, s. 55(2)
- F58** S. 69(3AA)-(3AD) inserted (28.7.2000) by 2000 c. 17, s. 55(3)
- F59** Words in s. 69(3AA)(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(2)(a)** (with Sch. 7)
- F60** Words in s. 69(3AA)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(2)(b)** (with Sch. 7)
- F61** Words in s. 69(3AC) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by **Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 160(3)** (with Sch. 7)
- F62** S. 69(3A) inserted (16.7.1992, the amending provision applying in relation to exchanges made on or after 1.1.1992) by **Finance (No. 2) Act 1992 (c. 48), s. 36(1)(2)**
- F63** Words in s. 69(4)(a) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(a)
- F64** Words in s. 69(4)(b) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(b)
- F65** Word in s. 69(4)(c) substituted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(c)
- F66** S. 69(4ZA) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(4)



*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- F67** Words in s. 69(4ZA)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 160\(4\)\(a\)](#) (with Sch. 7)
- F68** Words in s. 69(4ZA)(b)(ii) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 160\(4\)\(b\)](#) (with Sch. 7)
- F69** S. 69(4A) inserted (3.5.1994) by [1994 c. 9, s. 102, Sch. 13 para. 6\(3\)](#)
- F70** Words in s. 69(5) inserted (28.7.2000) by [2000 c. 17, s. 55\(4\)](#)
- F71** S. 69(5A) inserted (28.7.2000) by [2000 c. 17, s. 55\(5\)](#)
- F72** Words in s. 69(9) substituted (in relation to tax for the year 1992-1993 and subsequent years subject as mentioned in s. 289 of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 19\(1\)](#) (with s. 60, 101(1), 171, 201(3))

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

- C13** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*
- C14** S. 69 modified (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 142\(2\)](#)
- C15** *Definition employed for purposes of Finance Act 1990 (c. 29) s. 36—roll-over relief where replacement asset owned*

## **70 Chargeable amounts.**

- (1) This section has effect to determine the chargeable amount for the purposes of section 68 above.
- (2) If the chargeable event falls within section 69(1)(a), (b) or (c) above the following rules shall apply—
- (a) if the event constitutes a disposal of the securities by the trustees for the purposes of the [<sup>F73</sup>Taxation of Chargeable Gains Act 1992], the chargeable amount is an amount equal to the sums allowable under section [<sup>F73</sup>38(1)(a)] and (b) of that Act;
- (b) if the event does not constitute such a disposal, the chargeable amount is an amount equal to the sums which would be so allowable had the trustees made a disposal of the securities for the purposes of that Act at the time the chargeable event occurs.
- (3) If the chargeable event falls within section 69(1)(d) above the chargeable amount is an amount equal to the sum concerned.
- [<sup>F74</sup>(4) If the chargeable event falls within section 69(1)(e) above the chargeable amount is an amount equal to—
- (a) the amount of the consideration received for the qualifying transfer mentioned in section 69(1)(e) above, less
- (b) the amount of any expenditure by the trustees for a qualifying purpose during the period mentioned in section 69(5A) above.]

#### **Textual Amendments**

- F73** Words in s. 70(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 19\(2\)](#) (with ss. 60, 101(1), 201(3))
- F74** S. 70(4) inserted (28.7.2000) by [2000 c. 17, s. 55\(6\)](#)

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1989, Part II. (See end of Document for details)*

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

**C16** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**71 Further charges to tax: borrowing.**

- (1) This section applies where—
- (a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees of an employee share ownership trust,
  - (b) at the time the event occurs anything is outstanding in respect of the principal of an amount or amounts borrowed at any time by the trustees, and
  - (c) the chargeable event is one as regards which section 72(2)(b) below applies.
- (2) In the following provisions of this section—
- (a) “the initial chargeable event” means the event referred to in subsection (1)(a) above, and
  - (b) “the total outstanding amount” means the total amount outstanding, at the time the initial chargeable event occurs, in respect of the principal of an amount or amounts borrowed at any time by the trustees.
- (3) If any of the total outstanding amount is repaid after the initial chargeable event occurs, a further chargeable event shall occur in relation to the trustees at the end of the year of assessment in which the repayment is made.
- (4) In such a case—
- (a) the trustees shall be treated as receiving, when the further event occurs, [<sup>F75</sup>income of an amount that] is equal to the chargeable amount,
  - <sup>F76</sup>(b) that income shall be chargeable to income tax for the year of assessment at the end of which the further event occurs,
  - (ba) the tax so chargeable shall be charged on the full amount of the income the trustees are treated as receiving in the year of assessment [<sup>F77</sup>, and]
  - (bb) the trustees are liable for any tax so chargeable, ]<sup>F78</sup>...
  - <sup>F79</sup>(c) .....
- (5) Subject to subsection (6) below, for the purposes of subsection (4) above the chargeable amount is an amount equal to the aggregate of the total outstanding amount repaid in the year of assessment.
- (6) In a case where section 72(2)(b) below had effect in the case of the initial chargeable event, for the purposes of subsection (4) above the chargeable amount is an amount equal to the smaller of—
- (a) the aggregate of the total outstanding amount repaid in the year of assessment, and
  - (b) an amount found by applying the formula A-B-C.
- (7) For the purposes of subsection (6) above—
- (a) A is the amount which would be the chargeable amount for the initial chargeable event apart from section 72(2) below,
  - (b) B is the chargeable amount for the initial chargeable event, and
  - (c) C is the amount (if any) found under subsection (8) below.

*Status: Point in time view as at 13/08/2009.*

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- (8) If, before the further chargeable event occurs, one or more prior chargeable events have occurred in relation to the trustees by virtue of the prior repayment of any of the total outstanding amount found for the time the initial chargeable event occurs, the amount found under this subsection is an amount equal to the chargeable amount for the prior chargeable event or to the aggregate of the chargeable amounts for the prior chargeable events (as the case may be).
- (9) In a case where—
- (a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees in circumstances mentioned in subsection (1) above,
  - (b) a sum falls to be included in the total outstanding amount found for the time the event occurs,
  - (c) another chargeable event (within the meaning of that section) occurs in relation to the trustees in circumstances mentioned in subsection (1) above, and
  - (d) the same sum or a part of it would (apart from this subsection) fall to be included in the total outstanding amount found for the time the event occurs,
- the sum or part (as the case may be) shall not be included in the total outstanding amount found for the time the other chargeable event occurs.
- (10) In ascertaining for the purposes of this section whether a repayment is in respect of a particular amount, amounts borrowed earlier shall be taken to be repaid before amounts borrowed later.
- (11) Subsections (3) to (7) of section 68 above shall apply where tax is assessed by virtue of this section as they apply where tax is assessed by virtue of that section.

#### Textual Amendments

- F75** Words in s. 71(4)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 408\(a\)](#) (with [Sch. 2](#))
- F76** S. 71(4)(b)(ba)(bb) substituted for s. 71(4)(b) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 408\(b\)](#) (with [Sch. 2](#))
- F77** Word in s. 71(4)(ba) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 28\(4\)\(a\)\(7\)](#)
- F78** Word in s. 71(4)(bb) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 28\(4\)\(b\)\(7\), Sch. 26 Pt. 3\(15\)](#)
- F79** S. 71(4)(c) repealed (with effect in relation to payments made on or after 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 28\(2\)\(b\)\(5\), Sch. 26 Pt. 3\(15\)](#)

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

- C17** See [Finance Act 1990 \(c. 29\) ss.31–40](#)—*roll-over relief for disposal of assets to employee share ownership trusts*

## 72 Limit on chargeable amount.

- (1) For the purposes of this section each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) an event which is a chargeable event by virtue of section 69 above;
  - (b) an event which is a chargeable event by virtue of section 71 above.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (2) If a chargeable event (the event in question) occurs in relation to the trustees of an employee share ownership trust, the following rules shall apply—
- (a) the amount which would (apart from this subsection) be the chargeable amount for the event in question shall be aggregated, for the purposes of paragraph (b) below, with the chargeable amounts for other chargeable events (if any) occurring in relation to the trustees before the event in question,
  - (b) if the amount which would (apart from this subsection) be the chargeable amount for the event in question (or the aggregate found under paragraph (a) above, if there is one) exceeds the deductible amount, the chargeable amount for the event in question shall be the amount it would be apart from this subsection less an amount equal to the excess, and
  - (c) section 70(2) and (3) and section 71(5) above shall have effect subject to paragraph (b) above.
- (3) For the purposes of subsection (2) above the deductible amount (as regards the event in question) is an amount equal to the total of the sums falling within subsection (4) below.
- (4) A sum falls within this subsection if it has been received by the trustees before the occurrence of the event in question and—
- (a) it has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, before the occurrence of that event, or
  - (b) it would fall to be so deducted or treated if a claim for relief under section 67 above had been made immediately before the occurrence of that event.

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

**C18** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**73 Information.**

- (1) An inspector may by notice in writing require a return to be made by the trustees of an employee share ownership trust if they have at any time received a sum which has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.
- (2) Where he requires such a return to be made the inspector shall specify the information to be contained in it.
- (3) The information which may be specified is information the inspector needs for the purposes of sections 68 to 72 above, and may include information about—
  - (a) sums received (including sums borrowed) by the trustees;
  - (b) expenditure incurred by them;
  - (c) assets acquired by them;
  - (d) transfers of assets made by them.
- (4) The information which may be required under subsection (3)(a) above may include the persons from whom the sums were received.
- (5) The information which may be required under subsection (3)(b) above may include the purpose of the expenditure and the persons receiving any sums.

*Status: Point in time view as at 13/08/2009.*

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- (6) The information which may be specified under subsection (3)(c) above may include the persons from whom the assets were acquired and the consideration furnished by the trustees.
- (7) The information which may be included under subsection (3)(d) above may include the persons to whom assets were transferred and the consideration furnished by them.
- (8) In a case where a sum has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, the inspector shall send to the trustees to whom the payment was made a certificate stating—
  - (a) that a sum has been so deducted or so treated, and
  - (b) what sum has been so deducted or so treated.
- (9) In the Table in section 98 of the <sup>M3</sup>Taxes Management Act 1970 (penalties for failure to comply with notices etc.) at the end of the first column there shall be inserted— “Section 73 of the Finance Act 1989 ”.

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

**C19** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**Marginal Citations**

**M3** 1970 c. 9.

**74 Interpretation.**

Schedule 5 to this Act shall have effect to determine whether, for the purposes of sections 67 to 73 above, a trust is at a particular time—

- (a) an employee share ownership trust;
- (b) a qualifying employee share ownership trust.

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

**C20** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

*Pensions etc.*

<sup>F80</sup>**75 Retirement benefits schemes.**

**Textual Amendments**

**F80** *Ss. 75-77* repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**F8076 Non-approved retirement benefits schemes.**

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**Textual Amendments**  
**F80** Ss. 75-77 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3 (with Sch. 36)

**F8077 Personal pension schemes.**

.....

**Textual Amendments**  
**F80** Ss. 75-77 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3 (with Sch. 36)

*Unit trusts etc.*

**78, 79. .... F81**

**Textual Amendments**  
**F81** Ss. 78, 79 repealed by Finance Act 1990 (c. 29, SIF 58), s.132, Sch. 19 Pt. IV Note

**F8280 .....**

**Textual Amendments**  
**F82** S. 80 repealed (31.7.1998) by 1998 c. 36, s. 165, Sch. 27 Pt. III(23)

**81 Offshore funds operating equalisation arrangements.**

- (1) In section 758 of the Taxes Act 1988 (offshore funds operating equalisation arrangements) in subsection (6) (reference to section 78 of the <sup>M4</sup> Capital Gains Tax Act 1979 not to include reference to it as applied by section 82) for the words “but not” there shall be substituted the words “and a reference to section 78”.
- (2) This section shall apply where a conversion of securities occurs on or after 14th March 1989; and “conversion of securities” here has the same meaning as in section 82 of the Capital Gains Tax Act 1979.

**Marginal Citations**  
**M4** 1979 c. 14.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

### *Life assurance*

#### **[<sup>F83</sup>82 Calculation of profits: bonuses etc**

- (1) This section and sections 82A [<sup>F84</sup>to [<sup>F85</sup>82F]] below have effect where the profits of an insurance company in respect of its life assurance business are [<sup>F86</sup>computed in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of the Corporation Tax Act 2009 (charge on trade profits)].
- (2) Any amounts which are allocated to policy holders or annuitants in respect of a period of account are allowed as a deduction in calculating the profits for the period of account.

[<sup>F87</sup>(2A) But amounts are not allowed as such a deduction if they—

- (a) are allocated to holders of policies under which they are eligible to participate in surplus,
- (b) are of a capital nature, and
- (c) are not funded from amounts brought into account as part of total income in line 19 of the revenue account prepared for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers) in respect of the whole of the company's long-term business.

(2B) For the purposes of subsection (2A) above payments made in connection with the reattribution of inherited estate are to be regarded as being of a capital nature.]

(3) For the purposes of subsection (2) above, an amount is allocated to policy holders or annuitants if (but only if)—

- (a) bonus payments are made to them,
- (b) reversionary bonuses are declared in their favour, or
- (c) a reduction is made in the premiums payable by them.

(4) Where an amount is allocated to policy holders or annuitants for the purposes of subsection (2) above, the amount of the allocation is—

- (a) in the case of bonus payments, the amount of the payments,
- (b) in the case of declared reversionary bonuses, the amount of the liabilities assumed by the company in consequence of the declaration, and
- (c) in the case of a reduction in premiums, the amount of the liabilities assumed by the company in consequence of the reduction.

#### **Textual Amendments**

- F83** Ss. 82-82B substituted for s. 82 (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(1\)](#)
- F84** Words in s. 82(1) substituted (with effect in accordance with Sch. 7 para. 5(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 5\(1\)](#)
- F85** Word in s. 82(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), [11](#)
- F86** Words in s. 82(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 341](#) (with [Sch. 2 Pts. 1, 2](#))
- F87** S. 82(2A)(2B) inserted (with effect in accordance with Sch. 23 para. 2(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 23 para. 2\(1\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

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

- C21** S. 82 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (SI 1997/473), reg. 32 (as substituted (8.4.2004) by [S.I. 2004/822](#), regs. 1, 27)
- C22** S. 82(1)(b) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), 26

### **82A Calculation of profits: policy holders' tax**

- (1) Tax expended on behalf of policy holders or annuitants is allowed as a deduction in calculating the profits to the extent (but only to the extent) that regulations made by the Treasury so provide.
- (2) The regulations may include provision for tax so expended to be so allowed even if it is not brought into account.
- (3) The regulations—
  - (a) may make different provision for different cases, and
  - (b) may include provision having effect in relation to periods of account during which they are made.

#### **Textual Amendments**

- F83** Ss. 82-82B substituted for s. 82 (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 1\(1\)](#)

### **82B Unappropriated surplus on valuation**

- (1) This section applies in relation to a period of account of the insurance company (“ the period of account in question ”) where—
  - (a) at the end of the period of account in question the company has an unappropriated surplus on valuation as shown in the return deposited with the Financial Services Authority under section 9.6 of the Prudential Sourcebook (Insurers) (an “ unappropriated surplus ”), and
  - (b) the company has not made an election in accordance with [<sup>F88</sup>Rule 9.10(c)] of the Prudential Sourcebook (Insurers) covering the period of account in question.
- (2) Where the company did not have an unappropriated surplus at the end of the period of account immediately preceding the period of account in question, so much of the unappropriated surplus at the end of the period of account in question as is required to meet the duty of fairness is allowed as a deduction in calculating the profits for the period of account in question.
- (3) Where the company did have an unappropriated surplus at the end of that immediately preceding period of account—
  - (a) if so much of the unappropriated surplus at the end of the period of account in question as is required to meet the duty of fairness exceeds so much of the unappropriated surplus at the end of that immediately preceding period of account as was required to meet that duty, the excess is allowed as a deduction in calculating the profits for the period of account in question, but



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- (b) if so much of the unappropriated surplus at the end of that immediately preceding period of account as was required to meet the duty of fairness exceeds so much of the unappropriated surplus at the end of the period of account in question as is required to meet that duty, the excess is to be taken into account as a receipt of the period of account in question.
- (4) In arriving for the purposes of this section at the amount of the unappropriated surplus which is or was required to meet the duty of fairness there is to be deducted the aggregate of amounts which—
- (a) for periods of account ending before 14th March 1989 (and the first notional period of account, within the meaning of section 82 above as originally enacted) have been excluded, by virtue of section 433 of the Taxes Act 1988, as being reserved for policy holders or annuitants, and
- (b) have not before that date either been allocated to or expended on behalf of policy holders or annuitants or been treated as profits of an accounting period on ceasing to be so reserved.
- (5) References in this section to the company’s duty of fairness are to the company’s duty to treat its policy holders and annuitants fairly with regard to terminal bonuses.]

#### Textual Amendments

- F83** Ss. 82-82B substituted for s. 82 (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 1(1)**
- F88** Words in s. 82B(1)(b) substituted (with effect in accordance with Sch. 9 para. 10(3) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 9 para. 10(2)**

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

- C23** S. 82B applied (with modifications) (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), **Sch. 33 para. 1(6)**
- C24** S. 82B modified by SI 1997/473 reg. 32A (as inserted (8.4.2004) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2004 \(S.I. 2004/822\)](#), regs. 1, **28** (as amended (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2005\)](#), regs. 1(1), 7)
- C25** S. 82B modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), **27**

### <sup>F89</sup>**82C Relevant financial reinsurance contracts**

#### Textual Amendments

- F89** S. 82C repealed (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 9](#), **Sch. 27 Pt. 2(9)**; S.I. 2008/379, art. 2

### [<sup>F90</sup>**82D. Treatment of profits: life assurance — adjustment consequent on change in Insurance Prudential Sourcebook**

- (1) This section applies in the case of—
- (a) a company which is a non-profit company, or

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(b) the non-profit fund of a company which is not a non-profit company, if an amount [<sup>F91</sup>(“the relevant amount”)] is shown in paragraph 4(12) of Appendix 9.4 to the periodical return for the company for [<sup>F92</sup>a] period of account which ends on or after 31st December 2006 [<sup>F93</sup>but before 1st January 2009 (a “relevant period of account”)].

<sup>F94</sup>(2) In computing profits [<sup>F95</sup>in accordance with the life assurance trade profits provisions]—

- (a) X shall be added to the closing liabilities of the company for the relevant period of account; and
- (b) XA shall be brought into account as a trading receipt of the company for each subsequent period of account until the total sum of the amounts so brought into account is equal to X (and if that total sum would otherwise exceed X, the excess shall be ignored).

<sup>F96</sup>(2A) .....

(2B) X is—

- (a) where the relevant period of account ends before 1st April 2007, the whole of the relevant amount;
- (b) where the relevant period of account ends on or after 1st April 2007 but before 1st January 2008, two-thirds of the relevant amount;
- (c) where the relevant period of account ends on or after 1st January 2008, one-third of the relevant amount.

(2C) XA is the amount found by the applying the following formula—

$(Y/12) \times Z$

$Y12 \times Z$

Here—

Y is the number of months in the period of account in question (part of a month being counted as a month); and

Z is—

- (a) where X is the whole of the relevant amount, one-third of X;
- (b) where X is two thirds of the relevant amount, one-half of X;
- (c) where X is one third of the relevant amount, the whole of X.]

<sup>F97</sup>(3) .....

<sup>F98</sup>(4) In a case falling within subsection (1)(b) above, the relevant amount shall be reduced (but not below nil) by so much (if any) of the amount shown in paragraph 4(12) of Appendix 9.4 to the periodical return as is reflected in column 1 of line 51 of the Form 14 for that period of account relating to the non-profit fund in question.]

<sup>F99</sup>(5) .....

[ This section is subject to sections 82E and 82F below.]]

<sup>F100</sup>(6)

#### Textual Amendments

**F90** S. 82D inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment No. 2\) Order 2006 \(S.I. 2006/3387\)](#), arts. 1(1), 5

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- F91** Words in s. 82D(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(2)(a)**
- F92** Word in s. 82D(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(2)(b)**
- F93** Words in s. 82D(1) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(2)(c)**
- F94** Ss. 82D(2)-(2C) substituted for s. 82D(2) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(3)**
- F95** Words in s. 82D(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 342** (with [Sch. 2 Pts. 1, 2](#))
- F96** S. 82D(2A) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **25**
- F97** S. 82D(3) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(4)**
- F98** S. 82D(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(5)**
- F99** S. 82D(5) repealed (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(2\)\(b\)](#), **Sch. 27 Pt. 2(10)**
- F100** S. 82D(6) added (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **12(6)**

## [<sup>F101</sup>82E. Section 82D: treatment of transferors under insurance business transfer schemes

- (1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”).
  - (2) Where the last period of account of the transferor ending before the transfer ends otherwise than immediately before the transfer, there is to be deemed for the purposes of this section and section 82D above to be—
    - (a) a period of account of the transferor beginning immediately after the last period of account ending before the transfer and ending immediately before the transfer;
    - (b) a period of account of the transferor beginning immediately after the transfer.
  - (3) In applying section 82D above and this section, where subsection (2) above applies, no account shall be taken of a period of account of the transferor which includes the time of the transfer.
- [<sup>F102</sup>(4) The transferor may make an election under this subsection if—
- (a) the transferee is a company which is a non-profit company, or
  - (b) the transfer is to a non-profit fund of a company which is a not a non-profit company,
- and (in either case) the transferee carries on life assurance business otherwise than on a mutual basis in the period of account of the transferee in which the transfer takes place and the profits of that business for that period are charged to tax under the I minus E basis.]

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- (5) An election under subsection (4) above—
- (a) is irrevocable; and
  - (b) is to be made by notice to an officer of Revenue and Customs no later than the end of the period of 28 days beginning with the day following that on which the transfer takes place.
- [<sup>F103</sup>(6) Where the transferor makes an election under subsection (4) above, then for any period of account of the transferor ending on or after the transfer—
- (a) in the case of a transfer of the whole of the long-term business, no amount shall be brought into account under section 82D(2)(b) above;
  - (b) in the case of a transfer of part of the long-term business, the amount to be so brought into account shall be reduced by the appropriate amount mentioned in section 82F(4) below.
- (7) Where the transferor does not make an election under subsection (4) above, then in computing profits [<sup>F104</sup>in accordance with the life assurance trade profits provisions]—
- (a) in the case of a transfer of the whole of the long-term business—
    - (i) the aggregate of all the amounts that would have been brought into account under section 82D(2)(b) above for periods of account of the transferor subsequent to the transfer if the transfer had not taken place shall be brought into account as a trading receipt of the transferor for the period of account ending immediately before the transfer, and
    - (ii) in relation to periods of account of the transferor subsequent to the transfer, section 82D(2)(b) above shall have no effect;
  - (b) in the case of a transfer of part of the long-term business—
    - (i) the transferor's relevant proportion of the aggregate referred to in paragraph (a)(i) above shall be brought into account as a trading receipt of the transferor for the period of account ending immediately before the transfer, and
    - (ii) in relation to periods of account of the transferor subsequent to the transfer, the amount to be brought into account under section 82D(2)(b) above shall be reduced by the transferor's relevant proportion.]
- [ The transferor's relevant proportion referred to in subsection (7) above is that
- <sup>F105</sup>(8) proportion which the total amount of the liabilities of the transferor to policy holders and annuitants transferred to the transferee or the transferees bears to the total of such liabilities of the transferor immediately before the transfer.
- (9) But in the case of a transfer where the total amount of the liabilities of the transferor so transferred is below nil, the transferor's relevant proportion is such proportion of the aggregate referred to in subsection (7)(a)(i) above as is just and reasonable.]

#### Textual Amendments

- F101** Ss. 82E, 82F inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **13**
- F102** S. 82E(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) \(No. 2\) Order 2008 \(S.I. 2008/3096\)](#), arts. 1(1), **3(2)**
- F103** S. 82E(6)(7) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) \(No. 2\) Order 2008 \(S.I. 2008/3096\)](#), arts. 1(1), **3(3)**

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- F104** Words in s. 82E(7) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 343** (with Sch. 2 Pts. 1, 2)
- F105** S. 82E(8)(9) added (with effect in accordance with art. 1(2) of the amending S.I.) by **The Insurance Companies (Corporation Tax Acts) (Amendment) (No. 2) Order 2008 (S.I. 2008/3096)**, arts. 1(1), **3(4)**

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

- C26** S. 82E applied (with modifications) by 1988 c. 1, s. 432YA(6) (as added) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/1031)**, arts. 1(1), **3(5)**

**82F. Section 82D: treatment of transferees under insurance business transfer schemes**

- (1) This section applies where—
- an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”); and
  - the transferor [<sup>F106</sup>makes] an election under section 82E(4) above.
- (2) For the purposes of this section and section 82D above, where the first period of account of the transferee ending after the transfer began before the transfer, it shall be treated as beginning immediately after the transfer.
- (3) Section 82D above shall apply as if—
- the reference in subsection (2)(b) of that section to subsequent periods of account included a reference to periods of account of the transferee ending on or after the transfer; and
  - the reference in that subsection to the company included a reference to the transferee.
- (4) The amount to be brought into account as a trading receipt of a transferee (or, if there is more than one transferee, all the transferees) for a period of account by virtue of this section shall not exceed the appropriate amount.
- (5) Where there is more than one transferee, the amount to be brought into account as a trading receipt of each transferee for a period of account by virtue of this section shall be the relevant fraction of the appropriate amount.

[ But where the numerator of the relevant fraction, in relation to any of the transferees, <sup>F107</sup>(5A) is [<sup>F108</sup>below nil], the amount to be brought into account as mentioned in subsection (5) in the case of each of the transferees is such proportion of the appropriate amount as is just and reasonable to attribute to each transferee.]

- (6) The appropriate amount is the amount which bears to XA for the period of account in question “the relevant proportion”.

Here—

XA has the meaning given by section 82D(2C) above; and

“the relevant proportion”, in relation to a transferee, is the proportion that the liabilities of the transferor to policy holders and annuitants transferred to the transferee [<sup>F109</sup>(or if more than one, all of the transferees)] bear to such liabilities of the transferor immediately before the transfer.

[ But where the total amount of the liabilities of the long-term business of the transferor <sup>F110</sup>(6A) transferred to all the transferees is below nil, the appropriate amount is such proportion of XA as is just and reasonable to attribute to all the transferees.]

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- (7) The relevant fraction, in relation to a transferee, is the fraction of which—
- (a) the numerator is the liabilities of the transferor to policy holders and annuitants transferred to the transferee; and
  - (b) the denominator is the liabilities of the transferor to policy holders and annuitants transferred to all the transferees.]

#### Textual Amendments

- F101** Ss. 82E, 82F inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **13**
- F106** Word in s. 82F(1)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) \(No. 2\) Order 2008 \(S.I. 2008/3096\)](#), arts. 1(1), **4(2)**
- F107** S. 82F(5A) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2008 \(S.I. 2008/1905\)](#), arts. 1(1), **2(2)**
- F108** Words in s. 82F(5A) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) \(No. 2\) Order 2008 \(S.I. 2008/3096\)](#), arts. 1(1), **4(3)**
- F109** Words in s. 82F(6) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) \(No. 2\) Order 2008 \(S.I. 2008/3096\)](#), arts. 1(1), **4(4)**
- F110** S. 82F(6A) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) \(No. 2\) Order 2008 \(S.I. 2008/3096\)](#), arts. 1(1), **4(5)**

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

- C27** S. 82F applied (with modifications) by 1988 c. 1, s. 432YA(6) (as added (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), arts. 1(1), **3(5)**)

#### **[<sup>F111</sup> 83 Receipts to be [<sup>F112</sup> taken] into account.**

- (1) The following provisions of this section have effect where the profits of an insurance company in respect of its life assurance business are [<sup>F113</sup> computed in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of the Corporation Tax Act 2009 (charge on trade profits)].
- [<sup>F114</sup>(2) There shall be taken into account as receipts of a period of account amounts (so far as referable to that business) brought into account for the period of account as—
- (a) investment income receivable before deduction of tax,
  - (b) an increase in the value of non-linked assets,
  - (c) an increase in the value of linked assets, <sup>F115</sup>...
  - (d) other income; [<sup>F116</sup> or
  - (e) business transfers-in.]
- and if amounts (so far as so referable) are brought into account for a period of account as a decrease in the value of non-linked assets or a decrease in the value of linked assets they shall be taken into account as an expense of the period of account.
- [<sup>F117</sup>(2AZA) No amount shown as transfer from non technical account in line 32 of Form 58 in respect of the whole of the company's long-term business in the periodical return for a period of account is to be taken into account as a receipt of the period of account.]

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[<sup>F118</sup>(2ZA) Amounts brought into account as mentioned in subsection (2) above are not to be taken into account in any other way; and this subsection applies in spite of—

- [<sup>F119</sup>(a) section 464 of the Corporation Tax Act 2009 (priority of Part 5 of that Act for corporation tax purposes),
- (b) section 699 of that Act (priority of Part 7 of that Act for corporation tax purposes), and
- (c) section 906 of that Act (priority of Part 8 of that Act for corporation tax purposes).]]

(2A) But subsection (2) above does not require to be taken into account as receipts of a period of account so much of the amounts brought into account as mentioned in [<sup>F120</sup>paragraphs (a) to (e)] of that subsection for the period of account as—

[<sup>F121</sup>(a) comprises notional income for the period of account (see subsections (2AA) and (2AB)),

(aa) represents an inter-fund transfer (see subsections (2AC) and (2AD)),]

[<sup>F122</sup>(ab) comprises a business transfer-in that is not brought into account in a revenue account prepared for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers) in respect of the whole of the company's long-term business,]

[<sup>F123</sup>(ac) consists of amounts brought into account as mentioned in section 83YC(5) below;]

<sup>F124</sup>(b) .....

(c) consists of interest paid under section 826 of the Taxes Act 1988 (interest on tax overpaid) in respect of a repayment or payment relating to an accounting period of the company ending before 1st July 1999;

but, subject to that, the whole of the amounts so brought into account for a period of account shall be taken into account as receipts of the period of account.

[<sup>F125</sup>(2AA) For the purposes of subsection (2A)(a) above, an amount brought into account as mentioned in paragraphs (a) to (d) of subsection (2) above for a period of account is to be regarded as notional income for the period of account if—

- (a) it represents income which has not been received, and is not receivable, from another person, and
- (b) a corresponding notional expense of the same amount is brought into account in the period of account;

and where particular income falls to be regarded as notional income under this subsection, the notional expense by virtue of which that income falls to be so regarded may not be taken into account for determining whether any other income is to be so regarded.

(2AB) In subsection (2AA) above “notional expense” means an expense which has not been paid, and is not payable, to another person and which—

- (a) is not deductible in computing the profits of the company in respect of its life assurance business in accordance with the provisions [<sup>F126</sup>applicable to the taxation of such profits under section 35 of the Corporation Tax Act 2009], but
- (b) had it represented an amount paid or payable to another person, would have been so deductible.

(2AC) For the purposes of subsection (2A)(aa) above, where—

- (a) one or more inter-fund transfers (“transfers-in”) are made into a fund and one or more inter-fund transfers (“transfers-out”) are made out of the fund, and

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- (b) the amount brought into account for the period of account as other income in respect of the transfers-in represents the amount by which—
  - (i) the amount or aggregate amount of the transfers-in, exceeds
  - (ii) the amount or aggregate amount of the transfers-out,
 only the amount of that excess shall be taken to represent the transfers-in.

(2AD) In this section “inter-fund transfer” means a transfer between two funds which in the company’s periodical return is shown in, or included in amounts shown in, line 14 or 33 of the Forms 58 for the funds.]

(2B) If any assets of the company’s long-term insurance fund are transferred by the company so that they cease to be assets of that fund, [<sup>F127</sup>the fair value of the assets at the time of the transfer, reduced by any amount brought into account in respect of them (for the period of account in which the transfer takes place or any earlier period of account) as part of total expenditure or [<sup>F128</sup>by being netted off against incomings in lines 11 to 15 of a revenue account] ,] shall be deemed to be brought into account for the period of account in which the transfer takes place as an increase in the the value of the assets of that fund [<sup>F129</sup>except to the extent that any of the exclusions in subsections (2C) to (2E) below apply.]

<sup>F130</sup> .....

(2C) Assets transferred to discharge liabilities in respect of deposits received from reinsurers or arising out of insurance operations, debenture loans or amounts borrowed from credit institutions are included in subsection (2B) above only if the deposits, loans or amounts borrowed—

- (a) were brought into account for any period of account, but
- (b) were not taken into account as receipts of the period of account under subsection (2) above.

(2D) Assets are excluded from subsection (2B) above if they are transferred for at least their fair value and the consideration for their transfer, when received, forms part of the company’s long-term insurance fund.

[<sup>F131</sup>(2DA) If—

- (a) assets of the company’s long-term insurance fund are transferred by the company to another person (“the transferee”),
- (b) the transferee assumes, as a result of the transfer, a liability representing a debenture loan which, immediately before the transfer, was a liability of that fund, and
- (c) the liability does not, as a result of the transfer, become a liability of any long-term insurance fund of the transferee,

so much of the fair value of the assets as does not exceed the fair value of the liability is excluded from subsection (2B) above.]

[<sup>F132</sup>(2E) Assets transferred by an insurance business transfer scheme are excluded from subsection (2B) above.]]

<sup>F133</sup>(3) .....

<sup>F133</sup>(4) .....

<sup>F133</sup>(5) .....

<sup>F133</sup>(6) .....



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- F134F133(6A) .....
- F133(6B) .....
- F133(6C) .....
- F133(7) .....
- F135(8) In this section—
- F136 .....
- F136 .....
- [<sup>F137</sup>“fair value” <sup>F138</sup>—
- (a) <sup>F139</sup> .....
- (b) in relation to liabilities, means the amount which would be paid to an independent person assuming them;]]
- F136 .....

This subsection does not apply where, or to the extent that, the amount concerned—

- (a) would fall to be taken into account as a receipt apart from this section,
- (b) is otherwise taken into account under subsection (2) above, or
- (c) is specifically exempted from tax.]

#### Textual Amendments

- F111** Ss. 83, 83A substituted for s. 83 (1.5.1995) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 16(1)** (with Sch. 8 paras. 55(2), 57(1))
- F112** Word in s. 83 heading substituted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 2(10)**
- F113** Words in s. 83(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 344(2)** (with Sch. 2 Pts. 1, 2)
- F114** S. 83(2)-(2E) substituted for s. 83(2) (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 2(2)**
- F115** Word in s. 83(2)(c) omitted (with effect in accordance with art. 1 of the amending S.I.) by virtue of The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), arts. 1, **8(2)(a)**
- F116** S. 83(2)(e) and preceding word added (with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), arts. 1, **8(2)(b)**
- F117** S. 83(2A) inserted (with effect in accordance with Sch. 23 para. 1(2)(3) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 1(1)**
- F118** S. 83(2ZA) inserted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 4(2)**
- F119** S. 83(2ZA)(a)-(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 344(3)** (with Sch. 2 Pts. 1, 2)
- F120** Words in s. 83(2A) substituted (with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), arts. 1, **8(3)**
- F121** S. 83(2A)(a)(aa) substituted for s. 83(2A)(a) (with effect in accordance with Sch. 9 para. 12(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 12(2)**
- F122** S. 83(2A)(ab) inserted (with effect in accordance with Sch. 10 para. 17(5) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 4(3)**
- F123** S. 83(2A)(ac) inserted (with effect in accordance with Sch. 17 para. 4(1) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 1(2)**
- F124** S. 83(2A)(b) repealed (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 9 para. 6(2), **Sch. 27 Pt. 2(9)**; S.I. 2008/379, art. 2

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- F125** S. 83(2AA)-(2AD) inserted (with effect in accordance with Sch. 9 para. 12(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 12(3)**
- F126** Words in s. 83(2AB)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 344(4)** (with Sch. 2 Pts. 1, 2)
- F127** Words in s. 83(2B) substituted (with effect in accordance with Sch. 9 para. 17(5) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 10(2)**
- F128** Words in s. 83(2B) substituted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 10(3)(a)**; S.I. 2008/379, art. 2
- F129** Words in s. 83(2B) substituted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 10(3)(b)**; S.I. 2008/379, art. 2
- F130** Words in s. 83(2B) repealed (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 9 para. 10(4), **Sch. 27 Pt. 2(9)**; S.I. 2008/379, art. 2
- F131** S. 83(2DA) inserted (with effect in accordance with Sch. 11 para. 6(5) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 6(3)**
- F132** S. 83(2E) substituted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 10(5)**; S.I. 2008/379, art. 2
- F133** S. 83(3)-(7) repealed (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by Finance Act 2007 (c. 11), Sch. 9 para. 11(2)(a), **Sch. 27 Pt. 2(9)**; S.I. 2008/379, art. 2
- F134** S. 83(6A) repealed (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(12)**
- F135** S. 83(3)-(8) substituted for s. 83(3) (29.4.1996 with effect as mentioned in Sch. 31 para. 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 4**
- F136** Words in s. 83(8) repealed (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by Finance Act 2007 (c. 11), Sch. 9 para. 11(2)(a), **Sch. 27 Pt. 2(9)**; S.I. 2008/379, art. 2
- F137** Words in s. 83(8) inserted (with effect in accordance with Sch. 33 para. 2(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 2(8)**
- F138** Words in s. 83(8) substituted (with effect in accordance with Sch. 11 para. 6(5) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 6(4)**
- F139** Words in s. 83(8) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 10 para. 10(3)(d), **Sch. 27 Pt. 2(10)**

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

- C28** S. 83 applied (1.5.1995) by 1988 c. 1, s. 439B(3)(a) (as inserted (1.5.1995) by 1995 c. 4, s. 51, Sch. 8 Pt. I para. 27(1) (with Sch. 8 paras. 55(2), 57(1)))  
S. 83 modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2), 33, 34**
- C29** S. 83 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 33** (as amended (8.4.2004) by S.I. 2004/822, **regs. 1, 29**)
- C30** S. 83 amendment to earlier affecting provision SI 1997/473 (8.4.2004) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2004 (S.I. 2004/822), **regs. 1, 30**
- C31** S. 83 modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1), 28**
- C32** S. 83(6) amendment to earlier affecting provision SI 1997/473 (8.4.2004) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2004 (S.I. 2004/822), **regs. 1, 30**

#### <sup>F140</sup> ~~83X~~ Structural assets

- (1) Section 83(2) does not require to be taken into account as receipts or expenses of a period of account income from, or an increase or a decrease in the value of, structural assets held by an insurance company in a non-profit fund.
- (2) For the purposes of subsection (1) above—

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- (a) an increase in the value of structural assets includes any amount by which their fair value when they cease to be structural assets, or come to be held otherwise than in any of the company's non-profit funds, exceeds their admissible value at the end of the preceding period of account, and
  - (b) a decrease in the value of structural assets includes any amount by which the admissible value of the assets at the end of the period of account in which they become structural assets, or come to be held in any of the company's non-profit funds, is less than their historic cost.
- (3) In this section “structural assets” means—
- (a) shares, debts and loans the value of which is required to be entered in lines 21 to 24 of Form 13 in the periodical return (UK insurance dependants and other insurance dependants), and
  - (b) assets of such other descriptions as are specified by regulations made by the Treasury.
- (4) Where a structural asset held by an insurance company in a non-profit fund ceases to be a structural asset or comes to be held otherwise than in any of the company's non-profit funds and, immediately before it came to be a structural asset held in any of the company's non-profit funds it (or any part of it) was an asset of the company's long-term insurance fund, the relevant value difference is to be taken into account under section 83(2)—
- (a) as a receipt (if it is a positive amount), or
  - (b) as an expense (if it is a negative amount),
- of the relevant period of account.
- (5) For the purposes of subsection (4) above “the relevant value difference”, in relation to an asset, is—
- HC - AV
- HCAV
- where—
- HC is its historic cost, and
- AV is its admissible value at the relevant time.
- (6) In subsection (4) above “the relevant period of account” means—
- (a) in a case within paragraph (a) of that subsection, the period of account in which the asset ceases to be a structural asset or comes to be held otherwise than in any of the company's non-profit funds, and
  - (b) in a case within paragraph (b) of that subsection, the period of account in which the asset first comes to be held otherwise than by the company or (where the company is a member of a group) otherwise than by a company which is a member of the group;
- and section 170 of the Taxation of Chargeable Gains Act 1992 (meaning of “group” etc) has effect for the interpretation of this subsection.
- (7) In subsection (5) above “the relevant time” means—
- (a) in a case where assets become structural assets held in any of the company's non-profit funds by virtue of the commencement of this section, the end of the last period of account of the company beginning before 1st January 2007, and

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- (b) otherwise, the time when the assets become structural assets held in any of the company's non-profit funds.
- (8) In this section “historic cost”, in relation to an asset which is or has been held in any of the company's non-profit funds, means—
- (a) where the asset came to be held in any of the company's non-profit funds on acquisition from another person, the consideration given by the company for the acquisition of the asset, and
- (b) otherwise, its fair value when it came to be held in any of the company's non-profit funds.
- (9) In this section “admissible value”, in relation to an asset and a time, means the value of the asset as shown in column 1 of Form 13 of the periodical return for the period ending with that time (or as would be so shown if there were a periodical return covering a period ending with that time).
- <sup>F141</sup>(10) .....
- <sup>F142</sup>(11) .....
- (12) Structural assets held by an insurance company in a non-profit fund are to be treated as being within paragraph (f) of subsection (4) of section 440 of the Taxes Act 1988; but no disposal or re-acquisition is to be deemed to occur by virtue of an asset ceasing to be within any other paragraph of that subsection and coming within that paragraph on becoming such a structural asset.
- (13) Structural assets held by an insurance company in a non-profit fund are to be treated as being “remaining” securities within section 440A(2)(e) of the Taxes Act 1988.
- (14) Section 432A of the Taxes Act 1988 does not have effect in relation to income arising from, or gains and losses accruing on the disposal of, structural assets held by an insurance company in a non-profit fund.
- (15) Regulations under subsection (3) <sup>F143</sup>... above may be made so as to have effect in relation to periods of account current when they are made (as well as periods of account beginning later).]

#### Textual Amendments

- F140** S. 83XA inserted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 2](#)
- F141** S. 83XA(10) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 7\(a\)](#)
- F142** S. 83XA(11) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 7\(a\)](#)
- F143** Words in s. 83XA(15) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 7\(b\)](#)

#### <sup>F144</sup>83YA Changes in value of assets brought into account: non-profit companies

- (1) This section applies if, in the case of any non-profit company,—
- (a) the amount shown in line 51 of Form 14 of its periodical return in respect of the whole of its long-term business for any period of account (“the current period of account”), exceeds
- (b) the aggregate amount of the amounts shown in line 51 of Form 14 of its periodical return in respect of its with-profits funds (if any) for that period.

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- (2) A comparison shall be made between—
  - (a) the appropriate line 51 amount of the company for the current period of account (“the current line 51 amount”), and
  - (b) the aggregate amount of the appropriate line 51 amount of the company for the previous period of account (if any) and the amount of any transfer-in amount of the company for that period.
- (3) If the current line 51 amount is greater than that aggregate amount, an amount equal to the difference shall be deemed for the purposes of section 83(2) to be brought into account for the current period of account as an increase in the value of non-linked assets.
- (4) If the current line 51 amount is less than that aggregate amount, an amount equal to the difference shall be deemed for the purposes of section 83(2) to be brought into account for the current period of account as a decrease in the value of non-linked assets.
- (5) The amount brought into account by virtue of this section shall be deemed for the purposes of section 83(2) to be brought into account—
  - (a) in the revenue account mentioned in section 83A(2)(a), or
  - (b) if section 83A(4) is applicable, in the separate revenue account treated as prepared by virtue of that provision.
- (6) Any amount brought into account by virtue of this section is in addition to any amount brought into account for the purposes of section 83(2) for the current period of account as an increase or decrease in the value of non-linked assets apart from this section.
- (7) For the purposes of this section a company has a transfer-in amount for any period of account (“the previous period of account”) if <sup>F145</sup>a transfer takes place in the following period of account; and the amount of the transfer-in amount for the previous period of account is any amount by which—
  - (a) the <sup>F146</sup>admissible] value of such of the assets of the long-term insurance fund of the company immediately after the transfer as were assets of <sup>F147</sup>a non-profit fund of the transferor] immediately before the transfer, exceeds
  - (b) the amount of any business transfer-in brought into account in accordance with section 83(2)(e) in relation to the transfer.]
- <sup>F148</sup>(8) .....
- (9) But if a company considers that, in relation to a period of account, it is no longer such a company, it may elect to be treated for the purposes of this section and section 83YB as if, in relation to that period of account and every subsequent period of account, it were a non-profit company.
- (10) Any such election—
  - (a) is irrevocable, and
  - (b) must be made by notice to an officer of the Board on or before the end of the period of 6 months beginning with the day on which that period of account ends.
- (11) For the purposes of this section and section 83YB—
  - <sup>F149</sup>“admissible value” has the meaning given by section 83XA(9);
  - “amount”, in relation to line 51 of Form 14 of the company's periodical return, includes a nil amount;

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F150 .....

#### Textual Amendments

- F144** Ss. 83YA, S. 83YB inserted (with effect in accordance with Sch. 11 para. 7(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 11 para. 7\(1\)](#)
- F145** Words in s. 83YA(7) substituted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 7\(2\)](#); S.I. 2008/379, [art. 2](#)
- F146** Word in s. 83YA(7)(a) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), [arts. 1\(1\)](#), [26\(2\)\(a\)](#)
- F147** Words in s. 83YA(7)(a) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), [arts. 1\(1\)](#), [26\(2\)\(b\)](#)
- F148** S. 83YA(8) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(2\)\(c\)](#), [Sch. 27 Pt. 2\(10\)](#)
- F149** Words in s. 83YA(11) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), [arts. 1\(1\)](#), [26\(3\)](#)
- F150** Words in s. 83YA(11) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(2\)\(c\)](#), [Sch. 27 Pt. 2\(10\)](#)

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

- C33** S. 83YA modified (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 11 para. 7\(3\)-\(6\)](#)

### 83YB Meaning of “appropriate line 51 amount” for purposes of s.83YA

- (1) For the purposes of section 83YA, the appropriate line 51 amount of a non-profit company for any period of account is determined as follows.

#### *Step 1*

Find the company's basic line 51 amount for the period of account.

#### *Step 2*

Reduce that amount (but not below nil) by the amount of any unrecognised capital amount of the company for the period of account.

But this step applies only if the period of account for which the appropriate line 51 amount of the company is being determined is the current period of account for the purposes of section 83YA.

#### *Step 3*

Increase the resulting amount by the amount of any relevant loan repayment made by the company in the period of account.

- (2) For the purposes of step 1, the company's basic line 51 amount for any period of account is—
- (a) in the case where no with-profits funds form part of its long-term business for that period, the amount shown in line 51 of Form 14 of its periodical return in respect of the whole of its long-term business for that period, and

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- (b) in any other case, so much of that amount as exceeds the aggregate amount of the amounts shown in line 51 of Form 14 of its periodical return in respect of its with-profits funds for that period.
- (3) For the purposes of step 2, the company has an unrecognised capital amount for any period of account if—
  - (a) any assets (“the added assets”) become assets of its long-term insurance fund but do not become assets of any of its with-profits funds,
  - (b) the consideration for the acquisition of the added assets does not comprise any assets which, immediately before the acquisition, were assets of its long-term insurance fund,
  - (c) no amount is shown in respect of the added assets in any of lines 17 to 41 of Form 14 of its periodical return in respect of the whole of its long-term business for the period of account, and
  - (d) no amount is brought into account for the period of account in consequence of the acquisition of the added assets.
- (4) For the purposes of step 2, the amount of the unrecognised capital amount for the period of account is the amount equal to the fair value of the added assets.
- <sup>F151</sup>(5) .....
- (6) For the purposes of step 3, a relevant loan repayment is made by the company in any period of account if—
  - (a) a repayment in respect of a loan is made by the company in the period of account, and
  - (b) the loan is one in relation to which the company has, for the purposes of step 2, an unrecognised capital amount for that or any other period of account.]

**Textual Amendments**

**F144** Ss. 83YA, S. 83YB inserted (with effect in accordance with Sch. 11 para. 7(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 11 para. 7\(1\)](#)

**F151** S. 83YB(5) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 10\(3\)\(e\)](#), [Sch. 27 Pt. 2\(10\)](#)

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

**C34** S. 83YB modified (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 11 para. 7\(3\)-\(6\)](#)

**[<sup>F152</sup>83YBFAFTS: charge in relevant period of account**

- (1) This section applies where an insurance company makes a financing-arrangement-funded transfer to shareholders (a “FAFTS”) in relation to a non-profit fund.
- (2) A company makes a FAFTS in relation to a non-profit fund if—
  - (a) the company enters into a relevant financing arrangement in relation to a non-profit fund in a period of account (see subsection (4) below),
  - (b) a positive amount is brought into account by the company as a transfer to non-technical account from the non-profit fund for that or any subsequent period of account (“the relevant period of account”), and
  - (c) the positive amount so brought into account for the relevant period of account exceeds the non-FAFTS surplus (see subsection (8) below).

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- (3) The amount of that excess is to be treated for the purposes of section 83(2) as brought into account by the company for the relevant period of account as an increase in the value of assets.
- (4) For the purposes of this section and section 83YD a company enters into a relevant financing arrangement in relation to a non-profit fund in a period of account if—
- (a) the loan condition (see subsection (5) below), or
  - (b) the reinsurance condition (see subsection (6) below),
- is met.
- (5) The loan condition is met if credits in respect of a money debt which is to any extent referable to the company's life assurance business (a “relevant money debt”) are brought into account in relation to a non-profit fund as part of total income for the period of account.
- (6) The reinsurance condition is met if—
- (a) in the period of account the company enters into a financial reinsurance arrangement relating to any liabilities (see subsection (7) below), and
  - (b) the reinsurance of the liabilities would (but for section 83YF(2)) be taken into account in calculating profits of the company's life assurance business in accordance with the [<sup>F153</sup>life assurance trade profits provisions] for the period of account;
- and such liabilities are referred to in this section and section 83YD as “relevant liabilities”.
- (7) For the purposes of this section the company enters into a financial reinsurance arrangement if—
- (a) it enters into a contract of insurance under which liabilities of the company to policy holders or annuitants (or both) in respect of a non-profit fund are reinsured,
  - (b) the reinsured liabilities are to reduce over time,
  - (c) the contract is a financing arrangement within the meaning of paragraph 9(3) of Appendix 9.4 to the Prudential Sourcebook (Insurers), and
  - (d) the premiums which, immediately after entering into the contract, the company is liable to pay under the contract are an insubstantial proportion of the amount of the reinsured liabilities at that time.
- (8) For the purposes of this section the “non-FAFTS surplus” is—
- (a) the amount shown in line 39 of Form 58 in relation to the non-profit fund in the periodical return for the relevant period of account, reduced (but not to below nil) by
  - (b) so much of the aggregate of the relevant outstanding debt amount (see subsection (9) below) and the relevant outstanding reinsurance amount (see subsection (10) below) as is untaxed (see subsection (11) below).
- (9) The “relevant outstanding debt amount” is the total amount of the credits brought into account by the company in relation to the non-profit fund as part of total income—
- (a) for the relevant period of account, or
  - (b) for any earlier period of account,
- in respect of relevant money debts to the extent that they have not been repaid before the end of the relevant period of account.



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- (10) The “relevant outstanding reinsurance amount” is the total of the amounts which would (but for section 83YF(2)) be taken into account in calculating profits of the company's life assurance business in accordance with the [F<sup>154</sup>life assurance trade profits provisions] —
- (a) for the relevant period of account, or
  - (b) for any earlier period of account,
- in respect of the reinsurance of relevant liabilities to the extent that they have not ceased to be reinsured before the end of the relevant period of account.
- (11) The aggregate of the relevant outstanding debt amount and the relevant outstanding reinsurance amount is “untaxed” to the extent that it exceeds the difference between—
- (a) the aggregate of the amounts treated as brought into account in the case of the company by the operation of subsection (3) above for periods of account of the company earlier than the relevant period of account, and
  - (b) the aggregate of the amounts which are the relevant amount for the relevant period of account or earlier periods of account of the company under section 83YD.

#### Textual Amendments

- F152** Ss. 83YC-83YF inserted (with effect in accordance with Sch. 17 para. 4 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 1\(3\)](#)
- F153** Words in s. 83YC(6)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 345\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F154** Words in s. 83YC(10) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 345\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

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

- C35** S. 83YC modified by 1988 c. 1, s. 444AE (as substituted (with effect in accordance with Sch. 17 para. 4(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 2](#))

### 83YD FAFTS: deduction in subsequent periods of account

- (1) This section applies where section 83YC(3) has operated in the case of the company for one or more periods of account.
- (2) The relevant amount (see subsection (4) below) is to be treated for the purposes of section 83(2) as brought into account by the company as a decrease in the value of assets for any subsequent period of account in relation to which the condition in subsection (3) below is met.
- (3) That condition is that—
- (a) a payment made by the company in respect of a relevant money debt is brought into account for the period of account as part of total expenditure in the revenue account for the non-profit fund without being deductible under [F<sup>155</sup>section 297(3) of the Corporation Tax Act 2009], or
  - (b) relevant liabilities are recaptured (that is, cease to be reinsured under a financial reinsurance arrangement) during the period of account.
- (4) For the purposes of subsection (2) above “the relevant amount” is an amount equal to so much of the aggregate of—

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- (a) the payments made and brought into account as mentioned in paragraph (a) of subsection (3) above, and
  - (b) the liabilities recaptured as mentioned in paragraph (b) of that subsection,
- as, when added to the aggregate of the amounts which are the relevant amount for each earlier period of account of the company in relation to which this section has applied, does not exceed the taxed amount (see subsection (6) below).
- (5) But the making of payments or recapture of liabilities is to be left out of account under paragraph (a) or (b) of subsection (4) above to the extent that it relates to refinancing; and for this purpose a payment or recapture of liabilities relates to refinancing if—
- (a) the company enters into a relevant financing arrangement in relation to the non-profit fund (in any period of account), and
  - (b) it is reasonable to assume that the making of the payments or the recapture of the liabilities is connected with its doing so.
- (6) For the purposes of subsection (4) above “the taxed amount” is the aggregate of the amounts treated as brought into account in the case of the company by the operation of section 83YC(3) above for earlier periods of account.

#### Textual Amendments

**F152** Ss. 83YC-83YF inserted (with effect in accordance with Sch. 17 para. 4 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 1\(3\)](#)

**F155** Words in s. 83YD(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 346](#) (with [Sch. 2 Pts. 1, 2](#))

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

**C36** S. 83YD modified by 1988 c. 1, s. 444AE (as substituted (with effect in accordance with Sch. 17 para. 4(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 2](#))

### 83YE Regulations: apportionment and redefining “financial reinsurance arrangement”

- (1) The Treasury may by regulations make provision for determining what parts of amounts within sections 83YC(3) and 83YD(2)—
  - (a) are referable to life assurance business, or
  - (b) are referable to gross roll-up business.
- (2) The Treasury may by regulations make provision amending section 83YC(7).
- (3) Regulations under subsection (2) above may include incidental, supplementary, consequential, transitional and savings provisions and may amend or repeal any enactment.
- (4) Regulations under this section—
  - (a) may make provision in relation to periods of account current when they are made, and
  - (b) if made before 1 January 2009, may make provision in relation to periods of account beginning on or after 1 January 2008 which have ended before they are made.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### Textual Amendments

**F152** Ss. 83YC-83YF inserted (with effect in accordance with Sch. 17 para. 4 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 1(3)**

### 83YF Financial reinsurance arrangements: further provision

- (1) This section applies where the company has entered into a financial reinsurance arrangement for the purposes of section 83YC.
- (2) Any reduction in the company's liabilities as a result of it doing so is not to be taken into account in calculating profits of the company's life assurance business in accordance with the [<sup>F156</sup>life assurance trade profits provisions].
- (3) Any increase in the company's liabilities as a result of the reduction over time of the liabilities reinsured under the contract of reinsurance is not to be taken into account in calculating profits of the company's life assurance business in accordance with the [<sup>F157</sup>life assurance trade profits provisions] otherwise than in accordance with section 83YD.]

#### Textual Amendments

**F152** Ss. 83YC-83YF inserted (with effect in accordance with Sch. 17 para. 4 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 1(3)**

**F156** Words in s. 83YF(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 347(2)** (with Sch. 2 Pts. 1, 2)

**F157** Words in s. 83YF(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 347(3)** (with Sch. 2 Pts. 1, 2)

### <sup>F158</sup>83ZA Contingent loans

#### Textual Amendments

**F158** S. 83ZA omitted (with effect in accordance with Sch. 17 para. 4(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 17 para. 1(4)** (with Sch. 17 para. 4(4))

### <sup>F159</sup>83A Meaning of “brought into account”.

83A

- (1) <sup>F160</sup>... “brought into account” means brought into account in an account which is recognised for the purposes of [<sup>F161</sup>sections 82A to 83ZA].
- (2) Subject to the following provisions of this section and to any regulations made by the Treasury, the accounts recognised for the purposes of [<sup>F162</sup>those sections] are—
  - (a) a revenue account prepared for the purposes of [<sup>F163</sup>Chapter 9 of the Prudential Sourcebook (Insurers)] in respect of the whole of the company's [<sup>F164</sup>long-term] business;
  - (b) any separate revenue account required to be prepared [<sup>F165</sup>under that Chapter] in respect of a [<sup>F166</sup>with-profits fund <sup>F167</sup>...].

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F168 ...

- (3) Where there are prepared any such separate accounts as are mentioned in subsection (2)(b) above, reference shall be made to those accounts rather than to the account for the whole of the business.

[ Where, in the case of any with-profits fund in respect of which there is prepared such  
 F169(3A) a separate account (“the sub-fund”),—

- (a) the sub-fund forms part of another with-profits fund (“the wider fund”) in respect of which such a separate account is also prepared,
- (b) in the case of a company whose life assurance business is mutual business, the sub-fund and each other with-profits fund which forms part of the wider fund are 100:0 funds, and
- (c) the wider fund—
  - (i) does not form part of another with-profits fund in respect of which such a separate account is also prepared, or
  - (ii) forms part of another with-profits fund in respect of which such a separate account is also prepared and that separate account is treated by this subsection as not being a recognised account for the purposes of those sections,

the account in respect of the wider fund shall not be a recognised account for the purposes of those sections.

- (3B) Where, in the case of such a separate account prepared in respect of a with-profits fund,—

- (a) the account is not prevented from being a recognised account for the purposes of those sections by virtue of subsection (3A) above, but
- (b) if paragraph (b) of that subsection were to be omitted, the account would be prevented from being such a recognised account by virtue of that subsection,

no such separate account prepared in respect of a with-profits fund forming part of that fund shall be such a recognised account.

- (3C) In subsection (3A) above “100:0 fund” means a fund in the case of which—

- (a) the policy holders of the fund are entitled to participate in all the profits of the fund, and
- (b) no other persons are entitled to participate in any of the profits of the fund.

- (3D) Subsection (3E) below applies where there is prepared such a separate account (“the with-profits account”) in respect of a with-profits fund—

- (a) of which no other with-profits fund forms part, but
- (b) of which a non-profit fund<sup>F170</sup> ... forms part.

- (3E) Where this subsection applies—

- (a) the with-profits account shall not be a recognised account for the purposes of those sections, but
- (b) there shall be treated as having been required and prepared a further separate revenue account covering so much of the items brought into account in the with-profits account as remains after excluding the items brought into account in that account in respect of the non-profit fund.]

[<sup>F171</sup>(4) If—

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- (a) a company prepares a revenue account in respect of the whole of its long-term business (“the main account”),
- (b) it prepares one or more such separate accounts as are mentioned in subsection (2)(b) above, and
- (c) the total of the items brought into account in the separate accounts—
  - (i) excluding any such accounts which by virtue of subsection (3A), (3B) or (3E)(a) above are not recognised accounts for the purposes of those sections, but
  - (ii) including any such accounts which by virtue of subsection (3E)(b) above are treated as having been required and prepared,is not equal to the total amount brought into account in the main account, there shall be treated as having been required and prepared a further separate revenue account covering the balance.]

F172(5) . . . . .

F173(6) . . . . .]

#### Textual Amendments

- F159** SS. 83, 83A substituted for s. 83 (1.5.1995) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 16(1)** (with **Sch. 8 paras. 55(2), 57(1)**)
- F160** Words in s. 83A(1) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 10 para. 13(a), Sch. 27 Pt. 2(10)**
- F161** Words in s. 83A(1) substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 10 para. 13(b)**
- F162** Words in s. 83A(2) substituted (29.4.1996 with effect as mentioned in **Sch. 31 para. 10(2)** of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 6(2)**
- F163** Words in s. 83A(2)(a) substituted (1.12.2001 with effect as mentioned in **art. 57(2)** of the amending Act) by **S.I. 2001/3629, art. 57(1)(a)**
- F164** Words in s. 83A(2)(a) substituted (1.12.2001) by **S.I. 2001/3629, art. 60(2)(a)**
- F165** Words in s. 83A(2)(b) substituted (1.12.2001 with effect as mentioned in **art. 57(2)** of the amending Act) by **S.I. 2001/3629, art. 57(1)(b)**
- F166** Words in s. 83A(2)(b) substituted (with effect in accordance with Sch. 9 para. 13(6) of the amending Act) by **Finance (No. 2) Act 2005 (c. 22), Sch. 9 para. 13(2)(a)**
- F167** Words in s. 83A(2)(b) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 10 para. 8(2)(d), Sch. 27 Pt. 2(10)**
- F168** Words in s. 83A(2) repealed (10.7.2003) by **Finance Act 2003 (c. 14), Sch. 43 Pt. 3(12)**
- F169** Ss. 83A(3A)-(3E) inserted (with effect in accordance with Sch. 9 para. 13(6) of the amending Act) by **Finance (No. 2) Act 2005 (c. 22), Sch. 9 para. 13(3)**
- F170** Words in s. 83A(3D)(b) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 10 para. 8(2)(d), Sch. 27 Pt. 2(10)**
- F171** S. 83A(4) substituted (with effect in accordance with Sch. 9 para. 13(6) of the amending Act) by **Finance (No. 2) Act 2005 (c. 22), Sch. 9 para. 13(4)**
- F172** S. 83A(5) repealed (1.1.1996) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(26)**, note
- F173** S. 83A(6) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 10 para. 8(2)(d), Sch. 27 Pt. 2(10)**

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

- C37** S. 83A modified (retrospective to 1.1.1995) by **The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(2), 36, 37** (as amended (30.1.2003) by **S.I. 2003/23, regs. 1, 8**; (8.4.2004) by **S.I. 2004/822, regs. 1, 32**; **S.I. 2005/2005, regs. 1(1), 8**)

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- C38** S. 83A amendment to earlier affecting provision SI 1997/473 (8.4.2004) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2004 \(S.I. 2004/822\)](#), regs. 1, **32**
- C39** S. 83A modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2)**, 36, 37 (as amended (8.6.2004) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2004 \(S.I. 2004/822\)](#), regs. 1, **31**, as amended (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2005\)](#), regs. 1(1), **8**)
- C40** S. 83A modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), **29**
- C41** S. 83A modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), **regs. 1(1)**, 30 (as amended by S.I. 2007/2134, **regs. 1(1)**, 24)
- C42** S. 83A modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Group Relief for Overseas Losses \(Modification of the Corporation Tax Acts for Non-resident Insurance Companies\) Regulations 2006 \(S.I. 2006/3218\)](#), regs. 1(1), **10**

**[<sup>F174</sup>83B Changes in recognised accounts: attribution of amounts carried forward under s.432F of Taxes Act 1988**

- (1) This section applies to a company where any revenue account that is recognised for a period of account (the “new period of account”) relates to funds or business which is different from the funds or business to which a revenue account that was recognised for the preceding period of account relates.
- (2) Any subsection (2) excess (within the meaning of section 432F(2) of the Taxes Act 1988) which would have been available under section 432F(3) or (4) of that Act to reduce a subsection (3) figure (within the meaning of section 432F(1) of that Act) of the company in the new period of account shall be attributed between the revenue accounts that are recognised for that period of account in such manner as is appropriate.
- (3) In this section “recognised” means recognised, by virtue of section 83A, for the purposes of sections 82A to [<sup>F175</sup>83ZA] .]

- Textual Amendments**
- F174** S. 83B inserted (with effect in accordance with Sch. 9 para. 14(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 9 para. 14(1)**
  - F175** Word in s. 83B(3) substituted (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 9 para. 11(3)**; S.I. 2008/379, art. 2

**[<sup>F176</sup>83AA Amounts added to long term insurance fund of a company in excess of that company’s loss.**

.....

- Textual Amendments**
- F176** S. 83AA repealed (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 9 para. 11(2)(b)**, **Sch. 27 Pt. 2(9)**; S.I. 2008/379, art. 2

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**F177 83AB Treatment of surplus where there is a subsequent transfer of business from the company etc.**

.....

**Textual Amendments**

**F177** S. 83AB repealed (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 11\(2\)\(c\)](#), [Sch. 27 Pt. 2\(9\)](#); [S.I. 2008/379](#), art. 2

**84 Interpretation of sections 85 to 89 and further provisions about insurance companies.**

**F178** (1) .....

**F179** (2) .....

**F180** (3) .....

(4) Chapter I of Part XII of the Taxes Act 1988 (insurance companies) shall have effect subject to the amendments in Schedule 8 to this Act, being—

- (a) amendments relating to franked investment income, loss relief and group relief; and
- (b) amendments consequential on or supplemental to sections 82 and 83 above and sections 85 to 89 below.

**F181** (5) .....

**F182** (6) .....

**Textual Amendments**

**F178** S. 84(1) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)

**F179** S. 84(2) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(a\)](#), [Sch. 27 Pt. 2\(10\)](#)

**F180** S. 84(3) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(a\)](#), [Sch. 27 Pt. 2\(10\)](#)

**F181** S. 84(5) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(a\)](#), [Sch. 27 Pt. 2\(10\)](#)

**F182** S. 84(6) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(a\)](#), [Sch. 27 Pt. 2\(10\)](#)

**85 Charge of certain receipts of basic life assurance business.**

(1) Subject to subsection (2) below, where [<sup>F183</sup>an insurance company is charged to tax under the I minus E basis in respect of its life assurance business], [<sup>F184</sup>the charge to corporation tax on income shall apply to] any receipts referable to the company's [<sup>F185</sup>basic life assurance and general annuity business]—

- (a) which, if [<sup>F186</sup>the profits of the life assurance business] were charged under [<sup>F187</sup>section 35 of the Corporation Tax Act 2009 (charge on trade profits)], would be taken into account in computing those profits; and
- (b) which would not be within the charge to tax (except under [<sup>F188</sup>section 35 of the Corporation Tax Act 2009]) apart from this section;

and for the purposes of paragraph (a) above, the provisions of section 83 above as to the manner in which any item is to be taken into account shall be disregarded.

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- (2) The receipts referred to in subsection (1) above do not include—
- (a) any premium; <sup>F189</sup> ...
  - [<sup>F190</sup>(b) any sum received under a reinsurance contract, except for reinsurance commissions, however described, (but subject to subsection (2ZA) below) and any sum calculated to any extent by reference to expenses of the company brought into account at Step 1 in section 76(7) of the Taxes Act 1988; or]
  - <sup>F191</sup>(c) .....
  - <sup>F191</sup>(ca) .....
  - <sup>F191</sup>(d) .....
  - (e) any sum which is not within the charge to tax (except under [<sup>F192</sup>section 35 of the Corporation Tax Act 2009]) because of an exemption from tax [<sup>F193</sup>; or
  - (f) any payment received under the Financial Services Compensation Scheme [<sup>F194</sup>, or from another insurance company,] to enable the company to meet its obligations to policy holders.]

[<sup>F195</sup>(2ZA) The reference in subsection (2)(b) above to reinsurance commissions does not include so much of the relevant reinsurance fraction (see subsection (9D) of section 76 of the Taxes Act 1988) of any reinsurance commissions received from the reinsurer under a fronting reinsurance contract (within the meaning of subsection (9B) of that section) as does not exceed the amount arrived at under subsection (9C) of that section in relation to the contract.]

[<sup>F196</sup>(2A) Receipts falling within subsection (1) above are to be taken into account for the purposes of corporation tax when they are brought into account.

<sup>F197</sup> .....

[<sup>F198</sup>(2B) Expenses are deducted from receipts falling within subsection (1) so far as is necessary for calculating the full amount of the profits.

(2BA) The provisions of Chapter 1 of Part 20 of the Corporation Tax Act 2009 (general rules for restricting deductions) apply to the calculation of those profits.]

(2C) For the purposes of subsection (1) above, a receipt is referable to basic life assurance and general annuity business if—

- (a) in the case of a repayment or refund of acquisition expenses, the acquisition expenses fell within section 86 below,
- [<sup>F199</sup>(aa) in the case of a repayment or refund of expenses other than acquisition expenses, the expenses—
  - (i) were attributable to basic life assurance and general annuity business for the purposes of Step 1 in subsection (7) of the new section 76 (see subsection (8) of that section), or
  - (ii) fell to be deducted by virtue of subsection (1) of the old section 76; and for this purpose, “the new section 76” and “the old section 76” have the same meaning as in section 44 of the Finance Act 2004 (see subsection (8) of that section),]
- (b) in the case of a reinsurance commission, the policy or contract reinsured under the arrangement in respect of which the commission is paid constitutes basic life assurance and general annuity business, and
- (c) in any other case, it is income which, if it were income from an asset, would by virtue of section 432A of the Taxes Act 1988 (apportionment of insurance



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companies' income) be referable to basic life assurance and general annuity business.]

- (3) This section has effect with respect to the receipts of accounting periods beginning on or after 1st January 1990 <sup>F200</sup> ....

#### Textual Amendments

- F183** Words in s. 85(1) substituted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 8 para. 13\(a\)](#) (with [Sch. 8 Pt. 2](#))
- F184** Words in s. 85(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 348\(2\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F185** Words in s. 85(1) substituted (for accounting periods beginning on or after 01.01.1992) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 48, [Sch. 7 paras.12, 18](#).
- F186** Words in s. 85(1) substituted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 8 para. 13\(b\)](#) (with [Sch. 8 Pt. 2](#))
- F187** Words in s. 85(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 348\(2\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F188** Words in s. 85(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 348\(2\)\(c\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F189** Word in s. 85(2)(a) repealed (with effect in accordance with s. 42 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F190** S. 85(2)(b) substituted (with effect in accordance with [Sch. 17 para. 6\(5\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 6\(2\)](#)
- F191** S. 85(2)(c)-(d) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 7\(2\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F192** Words in s. 85(2)(e) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 348\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F193** S. 85(2)(f) and preceding word inserted (with effect in accordance with [Sch. 9 para. 15\(4\)](#) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 9 para. 15\(2\)](#)
- F194** Words in s. 85(2)(f) inserted (with effect in accordance with [Sch. 17 para. 6\(5\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 6\(3\)](#)
- F195** S. 85(2ZA) inserted (with effect in accordance with [Sch. 17 para. 6\(5\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 6\(4\)](#)
- F196** S. 85(2A)-(2C) inserted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 7\(3\)](#)
- F197** Words in s. 85(2A) repealed (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 14\(3\)\(a\)](#), [Sch. 27 Pt. 2\(10\)](#)
- F198** S. 85(2B)(2BA) substituted for s. 85(2B) (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 348\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F199** S. 85(2C)(aa) inserted (with effect in accordance with [Sch. 9 para. 15\(4\)](#) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 9 para. 15\(3\)](#)
- F200** Words in s. 85(3) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(b\)](#), [Sch. 27 Pt. 2\(10\)](#)

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

- C43** S. 85(1) modified (retrospective to 1.1.1995) by [S.I. 1997/473](#), [regs. 1\(2\), 38](#)
- C44** S. 85(1)(2C) modified (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), [regs. 1\(1\), 31](#)

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### **[<sup>F201</sup>85A Excess adjusted [<sup>F202</sup>life assurance trade] profits**

- (1) Where for any accounting period an insurance company is charged to tax under the I minus E basis in respect of its life assurance business, the company shall be chargeable on any excess adjusted [<sup>F203</sup>life assurance trade profits under the charge to corporation tax on income].
- (2) “Excess adjusted [<sup>F204</sup>life assurance trade] profits” means any amount by which—
  - (a) the adjusted [<sup>F204</sup>life assurance trade] profits (see subsection (3)), exceeds
  - (b) the relevant amount (see subsection (5)).
- (3) “The adjusted [<sup>F205</sup>life assurance trade profits]” means the amount that would be the profits of the company's life assurance business for the accounting period if—
  - (a) computed in accordance with the [<sup>F206</sup>life assurance trade profits provisions], and
  - (b) adjusted in respect of losses (see subsection (4)).
- (4) The adjustment in respect of losses is a deduction of the amount which, disregarding section 434A(2)(a) of the Taxes Act 1988, would fall to be set off under section 393 of that Act against the company's income for the accounting period if the company had always been charged to tax under [<sup>F207</sup>section 35 of the Corporation Tax Act 2009].
- (5) The relevant amount (which may be a negative amount) is found by—
  - (a) taking the relevant income (see subsection (6)), and
  - (b) deducting from it the relevant aggregate (see subsection (8)).
- <sup>F208</sup>(6) “The relevant income” means—
  - (a) the company's BLAGAB income and gains for the accounting period and [<sup>F209</sup>non-taxable distributions received by the company in the accounting period] so far as referable (in accordance with section 432A of the Taxes Act 1988) to the company's basic life assurance and general annuity business (but excluding any amount within this section), and
  - (b) profits of the company chargeable <sup>F210</sup>... under section 436A of the Taxes Act 1988 (gross roll-up business) for the accounting period.]
- <sup>F211</sup>(6A) [ In this section “non-taxable distribution” means—
  - (a) a distribution that is exempt for the purposes of Part 9A of the Corporation Tax Act 2009 (company distributions), and
  - (b) does not include any amount withheld from the distribution on account of tax payable under the laws of a territory outside the United Kingdom.]
- (8) “The relevant aggregate” means the sum of—
  - (a) the expenses deduction (see Step 8 in section 76(7) of the Taxes Act 1988) in the case of the company for the accounting period,
  - (b) any non-trading deficit on the company's loan relationships [<sup>F212</sup>under Part 5 of the Corporation Tax Act 2009] which is produced for the accounting period in relation to the company's basic life assurance and general annuity business <sup>F213</sup>... , and
  - (c) any amount which in pursuance of a claim under [<sup>F214</sup>section 389(1) of the Corporation Tax Act 2009] is carried back to the accounting period and <sup>F215</sup>... applied in reducing profits of the company for the accounting period.
- (9) The Treasury may by regulations provide—

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- (a) that, in circumstances prescribed by the regulations, the charge imposed by this section for an accounting period may be reduced or eliminated, and
- (b) that the amount by which the charge is reduced, or (where the charge is eliminated) the amount of the charge, is instead imposed for a subsequent accounting period (or part of the amount is instead imposed for more than one subsequent accounting period).

(10) Regulations under subsection (9) may include provision having effect in relation to times before they are made.]

#### Textual Amendments

- F201** S. 85A inserted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 8 para. 14](#) (with [Sch. 8 Pt. 2](#))
- F202** Words in s. 85A heading substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(8\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F203** Words in s. 85A(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F204** Words in s. 85A(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F205** Words in s. 85A(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(4\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F206** Words in s. 85A(3)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(4\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F207** Words in s. 85A(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(5\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F208** S. 85A(6) substituted for s. 85A(6)(7) (with effect in accordance with [Sch. 17 para. 18\(6\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 18\(3\)](#)
- F209** Words in s. 85A(6)(a) substituted (with effect in accordance with [Sch. 14 para. 31](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 14 para. 16\(2\)](#)
- F210** Words in s. 85A(6)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(6\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F211** S. 85A(6A) inserted (with effect in accordance with [Sch. 14 para. 31](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 14 para. 16\(3\)](#)
- F212** Words in s. 85A(8)(b) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(7\)\(a\)\(i\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F213** Words in s. 85A(8)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(7\)\(a\)\(ii\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F214** Words in s. 85A(8)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(7\)\(b\)\(i\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F215** Words in s. 85A(8)(c) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 349\(7\)\(b\)\(ii\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 86 Spreading of relief for acquisition expenses.

[<sup>F216</sup>(1) For the purposes of this section, the acquisition expenses for any period of an insurance company carrying on life assurance business are such of the following as for that period fall to be included at Step 1 in section 76(7) of the Taxes Act 1988 (expenses of insurance companies)—

- (a) commissions (however described), other than commissions for persons who collect premiums from house to house,

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- (b) any other expenses payable solely for the purpose of the acquisition of business,
- (c) so much of any other expenses payable partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,

reduced by the appropriate portion of the adjusted loss deduction (if any) for the purposes of Step 5 for the period.

The appropriate portion of the adjusted loss deduction is the amount which bears to the whole of that deduction the proportion which UAE bears to S1, where—  
 UAE is the amount of the acquisition expenses, before making the reduction required by this subsection; and  
 S1 is the sum of the amounts described in paragraphs (a) and (b) in Step 4.]

- (2) The exclusion from paragraph (a) of subsection (1) above of commissions [<sup>F217</sup>for persons who collect premiums from house to house] shall not prevent such commissions constituting [<sup>F218</sup>expenses payable] for the purposes of paragraph(b) or paragraph (c) of that subsection.

<sup>F219</sup>(3) .....

<sup>F220</sup>(3A) .....

- (4) In subsection (1) above “the acquisition of business” includes
  - <sup>F221</sup>[( a )] the securing on or after 14th March 1989 of the payment of increased or additional premiums in respect of a policy of insurance issued in respect of an insurance already made (whether before, on or after that date) [<sup>F222</sup>and
  - (b) the securing, in an accounting period beginning on or after 1st January 1992, of the payment of increased or additional consideration in respect of an annuity contract already made (whether in an accounting period beginning before, or on or after, that date)].

<sup>F223</sup>(5) .....

<sup>F224</sup>(5A) .....

- [<sup>F225</sup>(6) Only a portion of the acquisition expenses for any accounting period (in this section referred to as “the base period”) is to be relieved under section 76 of the Taxes Act 1988 for that period.

That portion is one-seventh of the adjusted amount of the acquisition expenses for the period.

For the purposes of this section the adjusted amount of the acquisition expenses for the period is so much of those expenses as remains after—

- (a) including the whole of those expenses at Step 1,
- (b) making any reduction in those expenses which is required at Step 2, and
- (c) deducting any amount of reinsurance commission or any repayment or refund (in whole or in part) that falls for the period to be charged to tax under section 85 above,

Effect is given to this subsection at Step 6 (which requires the deduction of six-sevenths of the adjusted amount of the acquisition expenses for the period).]

<sup>F226</sup>(7) .....

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[<sup>F227</sup>(8) This subsection applies in any case where, in accordance with subsection (6) above, only a fraction of the adjusted amount of the acquisition expenses for the base period is to be relieved under section 76 of the Taxes Act 1988 for that period.

In any such case—

- (a) a further fraction of the adjusted amount of those expenses is to be relieved under that section for each succeeding accounting period after the base period, until the whole of the adjusted amount has been relieved,
- (b) the fraction is one-seventh, except that for any accounting period of less than a year the fraction is to be proportionately reduced, and
- (c) the relief is given by including that fraction of the adjusted amount at paragraph (b) of Step 8,

but this is subject to subsection (9) below.

(9) For any accounting period for which—

- (a) the fraction of the adjusted amount of the acquisition expenses for the base period which would otherwise fall to be relieved in accordance with subsection (8) above, exceeds
- (b) the balance of that adjusted amount which has not been so relieved for earlier accounting periods,

only that balance shall be so relieved.]

[<sup>F228</sup>(9A) In this section “expenses payable” has the same meaning as in Step 1.

(9B) Any reference in this section to a numbered Step is a reference to the Step so numbered in section 76(7) of the Taxes Act 1988.]

(10) This section has effect for accounting periods beginning on or after 1st January 1990

<sup>F229</sup>  
....

#### Textual Amendments

- F216** S. 86(1) substituted for s. 86(1)-(1B) (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(2\)](#)
- F217** Words in s. 86(2) substituted (29.4.1996 with effect in relation to accounting periods beginning on or after 1.1.1996) by [1996 c. 8, s. 167\(3\)\(b\)\(10\)](#)
- F218** Words in s. 86(2) substituted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(3\)](#)
- F219** S. 86(3) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(c\)](#), [Sch. 27 Pt. 2\(10\)](#)
- F220** S. 86(3A) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 16\(4\)\(c\)](#), [Sch. 27 Pt. 2\(10\)](#)
- F221** S. 86(4)(a) inserted (*for accounting periods beginning on or after 01.01.1992*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 48, [Sch. 7 paras. 13\(3\)](#), [18](#).
- F222** S. 86(4)(b) and word preceding it inserted (*for accounting periods beginning on or after 01.01.1992*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 48, [Sch. 7 paras. 13\(3\)](#), [18](#).
- F223** S. 86(5) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(4\)\(a\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F224** S. 86(5A) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(4\)\(b\)](#), [Sch. 42 Pt. 2\(3\)](#)
- F225** S. 86(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(5\)](#)
- F226** S. 86(7) repealed (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 6 para. 8\(6\)](#), [Sch. 42 Pt. 2\(3\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- F227** S. 86(8)(9) substituted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 6 para. 8\(7\)](#)
- F228** S. 86(9A)(9B) inserted (with effect in accordance with ss. 42-44 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 6 para. 8\(8\)](#)
- F229** Words in s. 86(10) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 10 para. 16\(4\)\(c\), Sch. 27 Pt. 2\(10\)](#)

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

- C45** S. 86 modified (*retrospective* to 1.1.1995) by [S.I. 1997/473, regs. 1\(2\), 39](#)
- C46** S. 86 modified (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), ss. 1297\(4\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F230** **87 Management expenses.**

.....

**Textual Amendments**

- F230** S. 87 repealed (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 10 para. 16\(4\)\(d\), Sch. 27 Pt. 2\(10\)](#)

**88 Corporation tax: policy holders' [<sup>F231</sup>share] of profits.**

- (1) Subject to subsection (2) <sup>F232</sup>... below, in the case of a company carrying on life assurance business, the rate of corporation tax chargeable for any financial year on
- [<sup>F233</sup>(a) the policy holders' share of the relevant profits for any accounting period, or
- (b) where the business is mutual business, the whole of those profits,
- shall] be deemed to be the rate at which income tax at the [<sup>F234</sup>basic rate] is charged for the year of assessment which begins on 6th April in the financial year concerned.
- <sup>F235</sup>(2) .....
- [<sup>F236</sup>(3) For the purposes of subsection (1) above the relevant profits of a company for an accounting period consist of the aggregate of—
- (a) the company's BLAGAB profits for the period, and
- (b) profits of the company chargeable <sup>F237</sup>... under section 436A of the Taxes Act 1988 (gross roll-up business) for the period.]
- (4) In determining for the purposes of section 13 of the Taxes Act 1988 (small companies' relief) the profits and basic profits (within the meaning of that section) of an accounting period of a company carrying on life assurance business, the policy holders' [<sup>F238</sup>share] of the company's relevant profits for that period [<sup>F239</sup>, or where the business is mutual business the whole of those profits,] shall be left out of account.
- (5) This section has effect with respect to the profits of a company for accounting periods beginning on or after 1st January 1990 <sup>F240</sup>...

**Textual Amendments**

- F231** Word in s. 88 heading substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 10 para. 15\(3\)](#)

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- F232** Words in s. 88(1) repealed (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(2\)\(a\)](#), [Sch. 43 Pt. 3\(12\)](#)
- F233** Words in s. 88(1) substituted (and deemed always to have had effect) by [Finance Act 1990 \(c. 29\)](#), [s. 45\(1\)\(10\)](#)
- F234** Words in s. 88(1) substituted (with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 47](#)
- F235** S. 88(2) repealed (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 8 para. 15\(2\)](#), [Sch. 27 Pt. 2\(8\)](#) (with [Sch. 8 Pt. 2](#))
- F236** S. 88(3) substituted for s. 88(3)-(3B) (with effect in accordance with Sch. 17 para. 18(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 18\(4\)](#)
- F237** Words in s. 88(3)(b) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 1329\(1\)](#), [Sch. 1 para. 350](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F238** Word in s. 88(4) substituted (and deemed always to have had effect) by [Finance Act 1990 \(c. 29\)](#), [s. 45\(2\)\(10\)](#)
- F239** Words in s. 88(4) inserted (and deemed always to have had effect) by [Finance Act 1990 \(c. 29\)](#), [s. 45\(2\)\(10\)](#)
- F240** Words in s. 88(5) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 41](#)

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

- C47** S. 88(3)(a) modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), [reg. 32](#) (as amended by [S.I. 2008/1937](#), [reg. 11](#))

**<sup>F241</sup>88A Lower corporation tax rate on certain insurance company profits.**

.....

**Textual Amendments**

- F241** S. 88A repealed (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(3\)](#), [Sch. 43 Pt. 3\(12\)](#)

**<sup>F242</sup>89 Policy holders' share of profits.**

(1) The references in <sup>F243</sup>section 88] above to the policy holders' share of the relevant profits for an accounting period of a company carrying on life assurance business <sup>F244</sup>... are references to —

- <sup>F245</sup>(a) in a case where there are no <sup>F246</sup>[life assurance trade] profits of the company for the period in respect of its life assurance business, the amount of the relevant profits, and
- (b) in any other case, the amount arrived at in accordance with subsection (1A) below.]

[ An amount is arrived at in accordance with this subsection by—

- <sup>F247</sup>(1A)<sup>F248</sup>(a) deducting from any profits of the company for the period chargeable <sup>F249</sup>... under section 436A of the Taxes Act 1988 so much of the <sup>F250</sup>[life assurance trade] profits of the company for the period in respect of its life assurance business as does not exceed the amount of any profits of the company for the period so chargeable, and]
- (b) deducting any remaining <sup>F250</sup>[life assurance trade] profits of the company for the period in respect of its life assurance business from any BLAGAB profits of the company for the period.]

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<sup>F251</sup>(1B) .....

(2) For the purposes of [<sup>F252</sup>subsections (1) and (1A)] above, the [<sup>F253</sup>life assurance trade] profits for a period shall be reduced by—

- <sup>F254</sup>(a) .....
- (b) the shareholders' share of any <sup>F255</sup>... [<sup>F256</sup>[<sup>F257</sup>non-taxable distributions received] in the period which are][<sup>F258</sup>referable [<sup>F259</sup>(in accordance with section 432A of the Taxes Act 1988)] to the company's basic life assurance and general annuity business][<sup>F260</sup>, and
- (c) the shareholders' share of any foreign income dividends arising to the company in the period [<sup>F261</sup>which are referable to the company's basic life assurance and general annuity business].]

[ For the purposes of subsection (2) above—

- <sup>F262</sup>(2A) (a) “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI;
- (b) the shareholders' share of any foreign income dividends is so much of the income they represent as is the shareholders' share.]

(3) For the purposes of those section “the shareholders' share” in relation to any income is so much of the income as is represented by the fraction

AB

where—

A is an amount equal to the [<sup>F263</sup>life assurance trade] profits of the company for the period in question in respect of its life assurance business, and

B is an amount equal to the excess of the company's relevant non-premium income and relevant gains over its relevant expenses and relevant interest for the period.

(4) Where there is no such excess as is mentioned in subsection (3) above, or where the [<sup>F264</sup>life assurance trade] profits are greater than any excess, the whole of the income shall be the shareholders' share; and (subject to that) where there are no [<sup>F264</sup>life assurance trade] profits, none of the income shall be the shareholders' share.

(5) In subsection (3) above the references to the relevant non-premium income, relevant gains, relevant expenses and relevant interest of a company for an accounting period are references respectively to the following items as brought into account for the period, so far as referable to the company's life assurance business,—

- (a) the company's investment income from the assets of its long-term [<sup>F265</sup>insurance] fund together with its other income, apart from premiums;
- (b) any increase in the value (whether realised or not) of those assets;
- (c) expenses payable by the company;
- (d) interest payable by the company;

and if for any period there is a reduction in the value referred to in paragraph (b) above (as brought into account for the period), that reduction shall be taken into account as an expense of the period.

(6) <sup>F266</sup>... where the company's period of account does not coincide with the accounting period, any reference to an amount brought into account for the accounting period is a reference to the corresponding amount brought into account for the period of account



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in which the accounting period is comprised, proportionately reduced to reflect the length of the accounting period as compared with the length of the period of account.

[ In this section—

<sup>F267</sup>(7)

[<sup>F268</sup>“life assurance trade profits”] means profits computed in accordance with the [<sup>F269</sup>life assurance trade profits provisions][<sup>F270</sup>]; but for the purposes of subsections (1), (1A) and (2) they are to be adjusted [<sup>F271</sup>in accordance with section 85A(4) in respect of losses incurred in an accounting period in which 31 December 2002 is included or any later accounting period].]

[<sup>F272</sup>“non-taxable distribution” has the same meaning as in section 85A.]

<sup>F273</sup>

..... ]

[ In a case where—

<sup>F274</sup>(7A)

- (a) the company becomes an insurance special purpose vehicle, and
  - (b) regulations made under section 84 of the Finance Act 2005 do not apply to it,
- subsection (7B) applies in the first period of account in which the company is an insurance special purpose vehicle (“the first period”).

(7B) Where this subsection applies, in computing a company’s [<sup>F275</sup>life assurance trade] profits there shall be brought into account as a trading receipt of the company the amount, if any, by which the amount shown in line 51 of Form 14 of the periodical return for the period preceding the first period exceeds—

- (a) the fund for future appropriations shown in the company’s IAD accounts, or
  - (b) the unallocated divisible surplus shown in the company’s IAS accounts,
- as the case may be, for that preceding period.

(7C) In subsection (7B)—

“IAD accounts” means accounts drawn up in accordance with the Council Directive of 19th December 1991 on the annual accounts of insurance undertakings (No.91/674/EEC);

“IAS accounts” means accounts prepared in accordance with international accounting standards.]

<sup>F276</sup>(8)

..... ]

#### Textual Amendments

- F242** S. 89 substituted retrospectively by [Finance Act 1990 \(c. 29\)](#) {s. 45(3)}
- F243** Words in s. 89(1) substituted (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(4\)\(a\)](#)
- F244** Words in s. 89(1) repealed (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 13\(4\)\(b\)](#), [Sch. 43 Pt. 3\(12\)](#)
- F245** S. 89(1)(a)(b) substituted (with effect in accordance with Sch. 33 para. 6(12) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(3\)](#)
- F246** Words in s. 89(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 351\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F247** S. 89(1A)(1B) inserted (with effect in accordance with Sch. 33 para. 6(11)(12) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 6\(4\)](#)
- F248** S. 89(1A)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 59](#) (with [Sch. 7 Pt. 2](#))

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- F249** Words in s. 89(1A) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 351(3)(a), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F250** Words in s. 89(1A) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(3)(b)** (with Sch. 2 Pts. 1, 2)
- F251** S. 89(1B) omitted (with effect in accordance with Sch. 17 para. 18(6) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 17 para. 18(5)(a)**
- F252** Words in s. 89(2) substituted (with effect in accordance with Sch. 33 para. 13(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 6(5)**
- F253** Words in s. 89(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(4)** (with Sch. 2 Pts. 1, 2)
- F254** S. 89(2)(a) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by 1997 c. 58, ss. 23, 52, Sch. 3 para. 14(2)(a)(4), **Sch. 8 Pt. II(6)**, note
- F255** Words in s. 89(2)(b) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by 1997 c. 58, ss. 23, 52, Sch. 3 para. 14(2)(b)(i)(4), **Sch. 8 Pt. II(6)**, note
- F256** Words in s. 89(2)(b) substituted (with effect in accordance with Sch. 33 para. 12(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 12(4)**
- F257** Words in s. 89(2)(b) substituted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 14 para. 17(2)**
- F258** Words in s. 89(2)(b) substituted (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by 1997 c. 58, s. 23, **Sch. 3 para. 14(2)(b)(ii)(4)**
- F259** Words in s. 89(2)(b) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 9(2)(d)**
- F260** S. 89(2)(c) and word immediately preceding it repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36, 52, Sch. 6 para. 19(2)(4), **Sch. 8 Pt. II(11)**, note
- F261** Words in s. 89(2)(c) substituted (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by 1997 c. 58, s. 23, **Sch. 3 para. 14(2)(c)(4)**
- F262** S. 89(2A) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by 1997 c. 58, ss. 36, 52, Sch. 6 para. 19(3)(4), **Sch. 8 Pt. II(11)**, note
- F263** Words in s. 89(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(5)** (with Sch. 2 Pts. 1, 2)
- F264** Words in s. 89(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(6)** (with Sch. 2 Pts. 1, 2)
- F265** Word in s. 89(5)(a) substituted (1.12.2001) by S.I. 2001/3629, **art. 60(3)**
- F266** Words in s. 89(6) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(3)(b), **Sch. 27 Pt. 2(10)**
- F267** S. 89(7) substituted (1.12.2001) by S.I. 2001/3629, **art. 58(3)**
- F268** Words in s. 89(7) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(7)(a)** (with Sch. 2 Pts. 1, 2)
- F269** Words in s. 89(7) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(7)(b)** (with Sch. 2 Pts. 1, 2)
- F270** Words in s. 89(7) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 16(3)** (with Sch. 8 Pt. 2)
- F271** Words in s. 89(7) substituted (with effect in accordance with Sch. 17 para. 37(2)-(4) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 37(1)**
- F272** Words in s. 89(7) inserted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 14 para. 17(3)**
- F273** Words in s. 89(7) repealed (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(12)**
- F274** S. 89(7A)-(7C) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/3430), arts. 1(1), **2(2)**
- F275** Words in s. 89(7B) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 351(8)** (with Sch. 2 Pts. 1, 2)

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**F276** S. 89(8) repealed (31.7.1997 with effect in relation to distributions made on or after 2.7.1997) by 1997 c. 58, ss. 23, 52, Sch. 3 para. 14(3)(4), **Sch. 8 Pt. 2(6)** Note

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

**C48** S. 89 amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by 1993 c. 34, s. 78(6)(11)

**F277 89A Modification of sections 82 to 83A, 88 and 89 in relation to overseas life insurance companies.**

**Textual Amendments**

**F277** S. 89A repealed (with effect in accordance with reg. 1 of the amending S.I.) by *The Overseas Life Insurance Companies Regulations 2006* (S.I. 2006/3271), reg. 1, **Sch. Pt. 1**

**F278 90 Life policies etc. held by companies.**

**Textual Amendments**

**F278** S. 90 omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of *Finance Act 2008* (c. 9), **Sch. 14 para. 17(a)**

**F279 90A Interpretation**

**Textual Amendments**

**F279** S. 90A repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by *Finance Act 2007* (c. 11), Sch. 10 para. 14(3)(c), **Sch. 27 Pt. 2(10)**

*Underwriters*

**91 Premiums trust funds: stock lending.**

(1) In section 725 of the Taxes Act 1988 (Lloyd’s underwriters) the following subsections shall be inserted after subsection (9)—

“(10) Subsection (11) below applies where the following state of affairs exists at the beginning of 1st January of any year or the end of 31st December of any year—

- (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2),

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- (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
- (c) securities have not been transferred in return, and
- (d) section 129(3) applies to the transfer made by the trustees.

(11) The securities transferred by the trustees shall be treated for the purposes of subsections (1) to (6) above as if they formed part of the premiums trust fund at the beginning of 1st January concerned or the end of 31st December concerned (as the case may be).”

F280(2) .....

(3) This section applies where the transfer by the trustees of a premiums trust fund is made after the date specified as mentioned in section 129(6) of the Taxes Act 1988.

**Textual Amendments**

**F280** s. 91(2) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

**92 Regulations about underwriters etc.**

(1) In section 451(1A) of the Taxes Act 1988 (regulations about underwriters)for the words from “with respect to” to the end there shall be substituted the words “with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year.”

(2) The following subsection shall be inserted after section 451(1A) of that Act—

“(1B) But the regulations may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made.”

F281(3) .....

F282(4) .....

F282(5) .....

F282(6) .....

F282(7) .....

**Textual Amendments**

**F281** S. 92(3) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))

**F282** S. 92(4)-(7) repealed (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, s. 213, [Sch. 23 Pt. III\(12\)](#) Note 5

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## Securities

F283 93 .....

### Textual Amendments

**F283** S. 93 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3), note

F284 94 .....

### Textual Amendments

**F284** S. 94 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3), note

F285 95 .....

### Textual Amendments

**F285** S. 95 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3), note

## 96 Securities: miscellaneous.

(1) In section 452(8) of the Taxes Act 1988 (special reserve funds) for the words from “In paragraph (a) above” to the end there shall be substituted—

“In paragraph (a) above “income” includes—

- (a) annual profits or gains chargeable to tax by virtue of section 714(2) or 716(3),
- (b) amounts treated as income chargeable to tax by virtue of paragraph 4 of Schedule 4, and
- (c) amounts treated as income chargeable to tax by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989.”

F286 (2) .....

F287 (3) .....

(4) The new paragraphs (b) and (c) inserted by subsection (1) above, <sup>F288</sup>... shall apply—

- (a) in the case of a deep discount security, where there is a disposal (within the meaning of Schedule 4 to the Taxes Act 1988) on or after 14th March 1989;
- (b) in the case of a deep gain security, where there is a transfer within the meaning of Schedule 11 to this Act, or a redemption, on or after 14th March 1989.

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#### Textual Amendments

- F286** S. 96(2) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F287** S. 96(3) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), [Sch. 11 paras. 22, 26\(2\), 27](#))
- F288** Words in s. 96(4) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### *Groups of companies*

#### [<sup>F289</sup>97] **Set-off of ACT where companies remain in the same group.**

- (1) In section 240 of the Taxes Act 1988 (set-off of company's ACT against subsidiary's liability to corporation tax) at the end of subsection (5)(set-off not to be made against subsidiary's liability to corporation tax for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company) there shall be added the words "unless throughout that period or part both companies were subsidiaries of a third company".
- (2) This section shall have effect in relation to accounting periods ending on or after 14th March 1989.]

#### Textual Amendments

- F289** S. 97 repealed (31.7.1998 with effect in accordance with [Sch. 3](#) of the amending Act) by [1998 c. 36](#), s. 165, [Sch. 27 Pt. III\(2\)](#), note

#### [<sup>F290</sup>98] **Restriction on set-off of ACT.**

- (1) After section 245 of the Taxes Act 1988 there shall be inserted—

##### **“ Restriction on application of section 240 in certain circumstances.**

- (1) This section applies if—
  - (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and
  - (c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of section 240 the surrendering company in relation to that amount.
- (2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection

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shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

- (3) Subsections (4) and (5) of section 245 shall apply also for the purposes of this section and as if the reference in subsection (4) of section 245 to the period of three years mentioned in subsection (1)(a) of that section were a reference to the period mentioned in subsection (1)(c) above.
- (4) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.

**Restriction on set-off where asset transferred after change in ownership of company.**

- (1) Subsection (4) below applies if—
  - (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) any advance corporation tax paid by the relevant company in respect of distributions made by it in an accounting period beginning before the change is treated under section 239(4) as paid by it in respect of distributions made by it in an accounting period ending after the change;
  - (c) after the change the relevant company acquires an asset from another company in such circumstances that section 273(1) of the Taxes Act 1970 applies to the acquisition; and
  - (d) a chargeable gain accrues to the relevant company on the disposal of the asset within the period of three years beginning with the change of ownership.
- (2) Subsection (1)(b) above shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.
- (3) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.
- (4) In relation to the accounting period in which the chargeable gain accrues to the relevant company (“the relevant period”), section 239 shall have effect as if the limit imposed by subsection (2) of that section on the amount of advance corporation tax to be set against the relevant company’s liability to corporation tax were reduced by whichever is the lesser of—
  - (a) the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the relevant period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the chargeable gain, and

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- (b) the amount of surplus advance corporation tax in relation to the accounting period which by virtue of subsection (2) above is treated for the purposes of subsection (1)(b) above as ending with the change of ownership.
- (5) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.”
- (2) This section shall have effect where the change in the ownership of the relevant company occurs on or after 14th March 1989.]

**Textual Amendments**

**F290** S. 98 repealed (31.7.1998 with effect in accordance with Sch. 3 of the amending Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(2), note

**F291** 99 .....

**Textual Amendments**

**F291** S. 99 repealed (11.5.2001 with application as mentioned in Sch. 33 Pt. 2(10) of the amending Act) by 2001 c. 9, s. 110, Sch. 33 Pt. 2(10), note

**100 Change in ownership of company.**

- (1) Section 769 of the Taxes Act 1988 (which contains rules for determining whether for the purposes of sections 245 and 768 of that Act there is a change in the ownership of a company) shall be amended in accordance with this section.
- (2) For subsection (6) there shall be substituted—

“(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
- (b) in a case falling within subsection (1)(b) above but not within subsection(1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
- (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—



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“the appropriate proportion”, in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

“relevant assets”, in relation to a company, means—

- (a) any ordinary share capital of another company, and
- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

- (a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).”

(3) Subsection (7)(b) and (c) shall cease to have effect.

(4) This section shall have effect where the change of ownership of a company would be treated as occurring on or after 14th March 1989.

## **101 Treatment of convertible shares or securities for purposes relating to group relief etc.**

(1) Paragraph 1 of Schedule 18 to the Taxes Act 1988 (which contains definitions relating to group relief) shall be amended in accordance with this section.

(2) For sub-paragraph (3)(b) there shall be substituted—

“(b) do not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

(3) For sub-paragraph (5)(a) there shall be substituted—

“(a) which does not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

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(4) After sub-paragraph (5) there shall be inserted—

“(5A) This sub-paragraph applies to any shares which—

- (a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and
- (b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities.

(5B) This sub-paragraph applies to any securities representing a loan of or including new consideration and—

- (a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and
- (b) which does not carry any such rights as are mentioned in sub-paragraph (5A)(b) above.

(5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company (“the parent company”) is another company’s “quoted parent company” if and only if—

- (a) the other company is a 75 per cent. subsidiary of the parent company,
- (b) the parent company is not a 75 per cent. subsidiary of any company, and
- (c) the parent company’s ordinary shares (or, if its ordinary share capital is divided into two or more classes, its ordinary shares of each class) are quoted on a recognised stock exchange or dealt in on the Unlisted Securities Market;

and in this sub-paragraph “ordinary shares” means shares forming part of ordinary share capital.

(5D) In the application of sub-paragraphs (3) and (5) to (5B) above in determining for the purposes of sub-paragraph (5C)(a) above who are the equity holders of the other company (and, accordingly, whether section 413(7) prevents the other company from being treated as a 75 per cent. subsidiary of the parent company for the purposes of sub-paragraph (5C)(a)), it shall be assumed that the parent company is for the purposes of sub-paragraphs (3) and (5) to (5B) above the other company’s quoted parent company.”

(5) In sub-paragraph (6) for the words “to (5)” there shall be substituted the words “to (5D)”.

(6) This section, so far as relating to Schedule 18 of the Taxes Act 1988 in its application (by virtue of section 138 below) for the purposes of subsections (1D) and (1E) of section 272 of the Taxes Act 1970, shall be deemed to have come into force on 14th March 1989.

## **102 Surrender of company tax refund etc. within group.**

(1) Subsection (2) below applies where—

- (a) there falls to be made to a company (“the surrendering company”) which is a member of a group throughout the appropriate period a tax refund relating to an accounting period of the company (“the relevant accounting period”), and

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- (b) another company (“the recipient company”) which is a member of the same group throughout the appropriate period also has the relevant accounting period as an accounting period.
- (2) Where this subsection applies the two companies may, at any time before the refund is made to the surrendering company, jointly give notice to the inspector in such form as the Board may require that subsection (4) below is to have effect in relation to the refund or to any part of the refund specified in the notice.
- (3) In subsection (1) above—
- “appropriate period” means the period beginning with the relevant accounting period and ending on the day on which the notice under subsection (2) above is given, and
- “tax refund relating to an accounting period” means, in relation to a company—
- (a) a repayment of corporation tax paid by the company for the period,
- (b) a repayment of income tax in respect of a payment received by the company in the period, or
- (c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in the period.
- (4) Subject to subsection (6) below, where this subsection has effect in relation to any refund or part of a refund—
- (a) the recipient company shall be treated for all purposes of the Tax Acts as having paid on the relevant date an amount of corporation tax for the relevant accounting period equal to the amount of the refund or part, and
- (b) there shall be treated for all those purposes as having been made to the surrendering company on the relevant date a repayment of corporation tax or income tax or a payment of tax credit (as the case may be) equal to the amount of the refund or part;

and where the refund is a repayment of corporation tax, any interest relating to it which has been paid by the surrendering company shall be treated as having been paid by the recipient company.

[<sup>F292</sup>(4A) Where subsection (4) above has effect in relation to any amount and there is, by virtue of any of subsections (7) to [<sup>F293</sup>(7CA)] of section 826 of the Taxes Act 1988, a period for which the whole or any part of that amount would not, had the refund been made to the surrendering company, have carried interest under that section, that period shall be treated as excluded—

- (a) from any period for which any refund made by virtue of subsection (4) above to the recipient company in respect of some or all of that amount or, as the case may be, that part of it is to carry interest under that section; and
- (b) from any period for which a sum representing some or all of that amount or part would (apart from this subsection) be treated by virtue of subsection (4) above as not carrying interest under section 87A of the <sup>M5</sup>Taxes Management Act 1970;

and in determining for the purposes of this subsection which part of any amount is applied in discharging a liability of the recipient company to pay any corporation tax and which part is represented by a refund to the recipient company, it shall be assumed that the part in relation to which there is a period which would not have carried interest under section 826 of the Taxes Act 1988 is applied in preference to any other part of that amount in or towards discharging the liability.]

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- (5) In subsection (4) above “relevant date”, in relation to a refund, means—
- (a) in so far as it consists of a repayment of corporation tax paid by the surrendering company after the date on which it became due and payable under <sup>F294</sup>section 59D or 59E of the Taxes Management Act 1970], the day on which it was paid by that company, and
  - (b) otherwise, the date on which corporation tax for the relevant accounting period became due and payable.
- (6) For the purpose of ascertaining the amount of any penalty to which the recipient company is liable under <sup>F295</sup>paragraph 18 of the Taxes Management Act 1970], the corporation tax which the company is treated as having paid by subsection (4)(a) above shall be treated as paid on the day on which the notice under subsection (2) above is given (and not on the relevant date).
- (7) A payment for a transferred tax refund—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution <sup>F296</sup> ... ;
- and in this subsection “a payment for a transferred tax refund” means a payment made by the receiving company to the surrendering company in pursuance of an agreement between them as respects the giving of a notice under this section, being a payment not exceeding the amount of the refund in question.
- (8) For the purposes of this section two companies are members of the same group if and only if they would be for the purposes of Chapter IV of Part X of the Taxes Act 1988.
- (9) This section shall not apply unless the relevant accounting period ends after such day, not being earlier than 31st March 1992, as the Treasury may by order made by statutory instrument appoint.

#### Textual Amendments

- F292** S. 102(4A) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 11**
- F293** Words in s. 102(4A) substituted (1.5.1995) by 1995 c. 4, s. 130, **Sch. 24 Pt. II para. 12(3)**
- F294** Words in s. 102(5)(a) substituted (27.7.1999) with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 89(2)(3)
- F295** Words in s. 102(6) substituted (27.7.1999) with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 3**
- F296** Words in s. 102(7)(b) repealed (with effect in accordance with Sch. 11 Pt. 2(7) Note of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**

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

- C49** S. 102 applied (with modifications) (7.1.1999) by [The Corporation Tax \(Instalment Payments\) Regulations 1998 \(S.I. 1998/3175\)](#), **reg. 9(1)** (as amended (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 2005/889, **regs. 1(1), 8)**

#### Marginal Citations

- M5** 1970 c. 9.

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### *Close companies*

#### **103 Repeal of apportionment provisions.**

- (1) Except as provided by subsection (2) below, Chapter III of Part XI of the Taxes Act 1988 (apportionment of undistributed income etc. of close companies) shall not have effect in relation to accounting periods beginning after 31st March 1989.
- (2) Section 427(4) of the Taxes Act 1988 (which gives relief to an individual where income apportioned to him in an earlier accounting period of a close company is included in a distribution received by him in a later accounting period), and section 427(5) of, and Part I of Schedule 19 to, that Act so far as they relate to section 427(4), shall continue to have effect in any case where the subsequent distribution referred to in section 427(4) is made before 1st April 1992.

#### **104 Meaning of “close company”.**

- (1) In section 414 of the Taxes Act 1988 for subsection (2) (further case in which a company is a close company for the purposes of the Tax Acts) there shall be substituted—
  - “(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—
    - (a) such rights as would, in the event of the winding-up of the company (“the relevant company”) on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
    - (b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.
- (2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—
  - (a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and
  - (b) any part of those assets which he would be entitled to receive if—
    - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound upon the basis set out in this subsection, and
    - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.
- (2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of

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that paragraph), references to “the relevant company” shall have effect as references to the company concerned.

(2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—

- (a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and
- (b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that section.”

(2) Subsection (3) of that section shall cease to have effect.

(3) In subsection (5)(b) of that section for the words from “paragraph(c)” to “that paragraph” there shall be substituted the words “paragraph (a) of subsection (2) above or paragraph (c) of section 416(2) and it would not be a close company if the references in those paragraphs”.

(4) This section shall be deemed to have come into force on 1st April 1989.

## **105 Small companies’ rate not available to certain close companies.**

(1) In section 13 of the Taxes Act 1988 (small companies’ relief) in subsection (1) for the words “a company resident in the United Kingdom” there shall be substituted the words “a company which—

- (a) is resident in the United Kingdom, and
- (b) is not a close investment-holding company (as defined in section 13A) at the end of that period.”

(2) After that section there shall be inserted the following section—

### **“13A Close investment-holding companies.**

(1) A close company is for the purposes of section 13(1) a “close investment-holding company” unless it complies with subsection (2) below.

(2) A company (“the relevant company”) complies with this subsection in any accounting period if throughout that period it exists wholly or mainly for any one or more of the following purposes—

- (a) the purpose of carrying on a trade or trades on a commercial basis,
- (b) the purpose of making investments in land or estates or interests in land in cases where the land is, or is intended to be, let to persons other than—

(i) any person connected with the relevant company, or

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- (ii) any person who is the wife or husband of an individual connected with the relevant company, or is a relative, or the wife or husband of a relative, of such an individual or of the husband or wife of such an individual,
  - (c) the purpose of holding shares in and securities of, or making loans to, one or more companies each of which is a qualifying company or a company which—
    - (i) is under the control of the relevant company or of a company which has control of the relevant company, and
    - (ii) itself exists wholly or mainly for the purpose of holding shares in or securities of, or making loans to, one or more qualifying companies,
  - (d) the purpose of co-ordinating the administration of two or more qualifying companies,
  - (e) the purpose of a trade or trades carried on on a commercial basis by one or more qualifying companies or by a company which has control of the relevant company, and
  - (f) the purpose of the making, by one or more qualifying companies or by a company which has control of the relevant company, of investments as mentioned in paragraph (b) above.
- (3) For the purposes of subsection (2) above, a company is a “qualifying company”, in relation to the relevant company, if it—
- (a) is under the control of the relevant company or of a company which has control of the relevant company, and
  - (b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) or (b) above.
- (4) Where a company is wound up, it shall not be treated as failing to comply with subsection (2) above in the accounting period that (by virtue of subsection (7) of section 12) begins with the time which is for the purposes of that subsection the commencement of the winding up, if it complied with subsection (2) above in the accounting period that ends with that time.
- (5) In this section—
- “control” shall be construed in accordance with section 416, and
  - “relative” has the meaning given by section 839(8).
- (6) Section 839 shall apply for the purposes of this section.”
- (3) This section shall have effect in relation to accounting periods beginning after 31st March 1989.

**[<sup>F297</sup>106 Restriction on payment of tax credits.**

- (1) In section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions) in subsection (3) after the words “made and” there shall be inserted the words “subject to subsections (3A) to (3D) below” and after that subsection there shall be inserted—
  - “(3A) Subject to subsection (3B) below, where it appears to the inspector that, in any accounting period of a company at the end of which it is a close investment-holding company—

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- (a) arrangements relating to the distribution of the profits of the company exist or have existed the main purpose of which or one of the main purposes of which is to enable payments, or payments of a greater amount, to be made to any one or more individuals under subsection (3) above in respect of such an excess as is mentioned in that subsection, and
- (b) by virtue of those arrangements, any eligible person—
  - (i) receives a qualifying distribution consisting of a payment made by the company on the redemption, repayment or purchase of its own shares, or
  - (ii) receives any other qualifying distribution in respect of shares in or securities of the company, where the amount or value of the distribution is greater than might in all the circumstances have been expected but for the arrangements,

the entitlement of the eligible person to have paid to him under subsection (3) above all or part of a tax credit in respect of any distribution made by the company in the period shall be restricted to such extent as appears to the inspector to be just and reasonable.

(3B) Subsection (3A) above does not apply in relation to a tax credit in respect of a dividend paid by a company in any accounting period in respect of its ordinary share capital if—

- (a) throughout the period, the company's ordinary share capital consisted of only one class of shares, and
- (b) no person waived his entitlement to any dividend which would have become payable by the company in the period or failed to receive any dividend which had become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

“arrangements” means arrangements of any kind whether in writing or not,

“close investment-holding company” has the meaning given by section 13A, and

“eligible person”, in relation to a qualifying distribution, means an individual resident in the United Kingdom who would (apart from subsection (3A) above) be entitled to have paid to him under subsection (3) above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled to have any excess of tax credit paid to him in a case where subsection (3A) above applies, tax credits shall be set against income tax in the order that results in the greatest payment in respect of the excess.”

(2) This section shall have effect in relation to distributions made by companies in accounting periods beginning after 31st March 1989.]

#### Textual Amendments

**F297** S. 106 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, s. 52, Sch. 8 Pt. II(9), note 3



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**107 Close companies: consequential amendments.**

Schedule 12 to this Act (in which Part I contains administrative provisions relating to close companies and Part II makes amendments connected with section 103 above) shall have effect.

*Settlements etc.*

**F298 108** .....

**Textual Amendments**

**F298** S. 108 repealed (1.5.1995 with effect for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(8)**, note

**109 Settlements where settlor retains interest in settled property.**

- F299** (1) .....
- F299** (2) .....
- F299** (3) .....
- F300** (4) .....

**Textual Amendments**

**F299** S. 109(1)-(3) repealed (1.5.1995 with effect for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(8)**, note  
**F300** S. 109(4) repealed (6.4.2005) by **Income Tax (Trading and Other Income) Act 2005** (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)

**F301 110 Residence of trustees.**

.....

**Textual Amendments**

**F301** S. 110 repealed (with effect in relation to payments made on or after 6.4.2006) by **Finance Act 2006** (c. 25), Sch. 13 para. 28(2)(c)(5), **Sch. 26 Pt. 3(15)**

**111 Residence of personal representatives.**

- F302** (1) .....
- F302** (2) .....
- F302** (3) .....

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- (4) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words from “or, in” to “section 701” there shall be substituted the words “or personal representatives (within the meaning of section 111 of the Finance Act 1989)”.
- (5) <sup>F303</sup> ... this section shall apply for the year 1989-90 and subsequent years of assessment.

<sup>F304</sup>(6) .....

<sup>F304</sup>(7) .....

<sup>F304</sup>(8) .....

**Textual Amendments**

**F302** S. 111(1)-(3) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 280(a), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**F303** Words in s. 111(5) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 280(b), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**F304** S. 111(6)-(8) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 280(a), **Sch. 3 Pt. 1** (with [Sch. 2](#))

*Miscellaneous*

<sup>F305</sup> **112 Security: trades etc.**

.....

**Textual Amendments**

**F305** S. 112 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), Sch. 1 para. 410, **Sch. 3** (with [Sch. 2](#))

<sup>F306</sup> **113 Security: trades etc. (supplementary).**

.....

**Textual Amendments**

**F306** S. 113 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), Sch. 1 para. 410, **Sch. 3** (with [Sch. 2](#))

<sup>F307</sup> **114 Relief for pre-trading expenditure.**

.....

**Textual Amendments**

**F307** S. 114 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

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**115 Double taxation: tax credits.**

(1) Where any arrangements having effect by virtue of section 788 of the Taxes Act 1988 provide —

- (a) for persons who are resident outside the United Kingdom and who received distributions from companies resident in the United Kingdom to be entitled to tax credits, and
- (b) for the amount paid to such a person by way of tax credit to be determined by reference to the amount to which an individual resident in the United Kingdom would have been entitled, subject to a deduction calculated by reference to the aggregate of the amount or value of the distribution and the amount of the tax credit paid,

the arrangements shall be construed as providing for that deduction to be calculated by reference to the gross amount or value of the distribution and tax credit, without any allowance for the deduction itself.

(2) This section shall have effect in relation to payments made before the passing of this Act as well as those made after that time, except that it shall not affect—

- (a) the judgment of any court given before 25th October 1988, or
- (b) the law to be applied in proceedings on appeal to the Court of Appeal or the House of Lords where the judgment of the High Court or the Court of Session which is in issue was given before that date.

<sup>F308</sup> **116** .....

**Textual Amendments**

**F308** S. 116 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3), note

**CHAPTER II**

**CAPITAL ALLOWANCES**

**117–** ..... <sup>F309</sup>  
**120**

**Textual Amendments**

**F309** Ss. 117–120 repealed by Capital Allowance Act 1990 (c.1, SIF 63:1), s. 164(4)(5), Sch. 2

<sup>F310</sup> **121** .....

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F310** S. 121 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 580, **Sch. 4**

**CHAPTER III**

CAPITAL GAINS

*Exemptions*

**F311** **122** .....

**Textual Amendments**

**F311** S. 122 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by *Taxation of Chargeable Gains Act 1992 (c. 12)*, ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**123 Increase of chattel exemption.**

(1) In the following enactments, namely—

<sup>F312</sup>(a) .....

<sup>F313</sup>(b) .....

(c) section 25(7) of that Act (information about assets disposed of), for “£3,000”, in each place where it occurs, there shall be substituted “£6,000”.

(2) This section applies to disposals on or after 6th April 1989 and accordingly, in relation to subsection (1)(b) above, to assets acquired on or after that date.

**Textual Amendments**

**F312** S. 123(1)(a) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by *Taxation of Chargeable Gains Act 1992 (c. 12)*, ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F313** S. 123(1)(b) omitted (13.8.2009) by virtue of *The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035)*, art. 1, **Sch. para. 60(c)**

*Gifts*

**F314** **124** .....

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**Textual Amendments**

**F314** S. 124 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F315** **125** .....

**Textual Amendments**

**F315** S. 125 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

*Non-residents etc.*

**F316** **126** .....

**Textual Amendments**

**F316** S. 126 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F317** **127** .....

**Textual Amendments**

**F317** S. 127 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F318** **128** .....

**Textual Amendments**

**F318** S. 128 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F319** **129** .....

**Textual Amendments**

**F319** S. 129 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

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F320 **130** .....

**Textual Amendments**

**F320** S. 130 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F321 **131** .....

**Textual Amendments**

**F321** S. 131 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F322 **132** .....

**Textual Amendments**

**F322** S. 132 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F323 **133** .....

**Textual Amendments**

**F323** S. 133 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

F324 **134** .....

**Textual Amendments**

**F324** S. 134 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

*Value shifting and groups of companies*

F325 **135** .....

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F325** S. 135 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F326** **136** .....

**Textual Amendments**

**F326** S. 136 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F327** **137** .....

**Textual Amendments**

**F327** S. 137 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F328** **138** .....

**Textual Amendments**

**F328** S. 138 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

*Miscellaneous*

**F329** **139** .....

**Textual Amendments**

**F329** S. 139 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

**F330** **140** .....

**Textual Amendments**

**F330** S. 140 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 12** (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

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F331 **141** .....

**Textual Amendments**  
**F331** S. 141 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch.12](#) (with ss. 201(3), Sch. 11 paras. 22, 26(2), 27)

## CHAPTER IV

### MANAGEMENT

#### *Information*

**142 Power to call for documents and information.**

(1) Section 20 of the <sup>M6</sup> Taxes Management Act 1970 (power to call for documents of taxpayer and others) shall be amended in accordance with subsections (2) to (8) below.

F332 (2) .....

F333 (3) .....

F334 (4) .....

(5) Subsections (4) and (5) shall be omitted.

(6) In subsection (6)—

F335 (a) .....

(b) the words “and in relation” onwards shall be omitted.

F336 (7) .....

F337 (8) .....

F338 (9) .....

(10) This section shall apply with respect to notices given on or after the day on which this Act is passed.

**Textual Amendments**  
**F332** S. 142(2) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 113(2), [Sch. 36 para. 92\(b\)](#) (with [Sch. 36 para. 38](#)); [S.I. 2009/404, art. 2](#) (with art. 12)  
**F333** S. 142(3) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 113(2), [Sch. 36 para. 92\(b\)](#) (with [Sch. 36 para. 38](#)); [S.I. 2009/404, art. 2](#) (with art. 12)  
**F334** S. 142(4) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 113(2), [Sch. 36 para. 92\(b\)](#) (with [Sch. 36 para. 38](#)); [S.I. 2009/404, art. 2](#) (with art. 12)  
**F335** S. 142(6)(a) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 113(2), [Sch. 36 para. 92\(b\)](#) (with [Sch. 36 para. 38](#)); [S.I. 2009/404, art. 2](#) (with art. 12)  
**F336** S. 142(7) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 113(2), [Sch. 36 para. 92\(b\)](#) (with [Sch. 36 para. 38](#)); [S.I. 2009/404, art. 2](#) (with art. 12)



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**F337** S. 142(8) omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 113(2), **Sch. 36 para. 92(b)** (with Sch. 36 para. 38); S.I. 2009/404, art. 2 (with art. 12)

**F338** S. 142(9) omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 113(2), **Sch. 36 para. 92(b)** (with Sch. 36 para. 38); S.I. 2009/404, art. 2 (with art. 12)

**Marginal Citations**

**M6** 1970 c. 9.

**143 Power to call for papers of tax accountant.**

(1) In section 20A of the <sup>M7</sup> Taxes Management Act 1970 (power to call for papers of tax accountant) for the last sentence of subsection (1) there shall be substituted—

“(1A) The reference to documents in subsection (1) above does not include—

- (a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or
- (b) journalistic material (as defined in section 13 of that Act).

(1B) Subject to subsection (1A) above, the reference to documents in subsection (1) above is to those specified or described in the notice in question; and—

- (a) the notice shall require documents to be delivered within such time (which shall not be less than thirty days after the date of the notice) as may be specified in the notice; and
- (b) the inspector may take copies of them or of extracts from them.”

(2) This section shall apply with respect to notices given on or after the day on which this Act is passed.

**Marginal Citations**

**M7** 1970 c. 9.

**144 Restrictions on powers under TMA ss.20 and 20A.**

(1) Section 20B of the <sup>M8</sup> Taxes Management Act 1970 (restrictions on powers under sections 20 and 20A) shall be amended as follows.

(2) In subsection (1), after the word “question” there shall be inserted the words “, or to furnish the particulars in question”.

<sup>F339</sup>(3) .....

(4) In subsection (2), after the words “deliver documents”, in the first place where they occur, there shall be inserted the words “or furnish particulars”.

<sup>F340</sup>(5) .....

(6) In subsection (7), the words from “to a person” to “daughter” shall be omitted.

<sup>F341</sup>(7) .....

(8) This section shall apply with respect to notices given on or after the day on which this Act is passed.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### Textual Amendments

- F339** S. 144(3) omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 113(2), **Sch. 36 para. 92(b)** (with Sch. 36 para. 38); S.I. 2009/404, art. 2 (with art. 12)
- F340** S. 144(5) omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 113(2), **Sch. 36 para. 92(b)** (with Sch. 36 para. 38); S.I. 2009/404, art. 2 (with art. 12)
- F341** S. 144(7) omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 113(2), **Sch. 36 para. 92(b)** (with Sch. 36 para. 38); S.I. 2009/404, art. 2 (with art. 12)

#### Marginal Citations

- M8** 1970c. 9.

### 145 Falsification etc. of documents.

- (1) After section 20B of the <sup>M9</sup>Taxes Management Act 1970 there shall be inserted—

#### “20BB Falsification etc. of documents.

- (1) Subject to subsections (2) to (4) below, a person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which—
- (a) he has been required by a notice under section 20 or 20A above, or
  - (b) he has been given an opportunity in accordance with section 20B(1) above,
- to deliver, or to deliver or make available for inspection.
- (2) A person does not commit an offence under subsection (1) above if he acts—
- (a) with the written permission of a General or Special Commissioner, the inspector or an officer of the Board,
  - (b) after the document has been delivered or, in a case within section 20(3) or (8A) above, inspected, or
  - (c) after a copy has been delivered in accordance with section 20B(4) or (14) above and the original has been inspected.
- (3) A person does not commit an offence under subsection (1)(a) above if he acts after the end of the period of two years beginning with the date on which the notice is given, unless before the end of that period the inspector or an officer of the Board has notified the person in writing that the notice has not been complied with to his satisfaction.
- (4) A person does not commit an offence under subsection (1) (b) above if he acts—
- (a) after the end of the period of six months beginning with the date on which an opportunity to deliver the document was given, or
  - (b) after an application for consent to a notice being given in relation to the document has been refused.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

(2) This section shall apply to any falsification, concealment, destruction or disposal of a document occurring on or after the day on which this Act is passed.

**Marginal Citations**

M9 1970 c. 9.

**F342 146 Entry with warrant to obtain documents.**

**Textual Amendments**

F342 S. 146 repealed (8.11.2007) by Finance Act 2007 (c. 11), s. 84(5), Sch. 27 Pt. 5(1); S.I. 2007/3166, art. 2(c)

**F343 147 Procedure where documents etc. are removed.**

**Textual Amendments**

F343 S. 147 repealed (8.11.2007) by Finance Act 2007 (c. 11), s. 84(5), Sch. 27 Pt. 5(1); S.I. 2007/3166, art. 2(c)

**148 Interpretation.**

(1) Section 20D of the <sup>M10</sup>Taxes Management Act 1970 shall be amended as follows.

(2) In subsection (2), for the words “of returns or accounts to be made or delivered by the other” there shall be substituted the words “or delivery of any information, return, accounts or other document which he knows will be, or is or are likely to be, used”.

(3) For subsection (3) there shall be substituted—

“(3) Without prejudice to section 127 of the Finance Act 1988, in sections 20 to 20CC above “document” has, subject to sections 20(8C) and 20A(1A), the same meaning as it has—

- (a) in relation to England and Wales, in Part I of the Civil Evidence Act 1968,
- (b) in relation to Scotland, in Part III of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, and
- (c) in relation to Northern Ireland, in Part I of the Civil Evidence Act (Northern Ireland) 1971.”

F344 (4) .....

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Textual Amendments**

**F344** S. 148(4) repealed (8.11.2007) by Finance Act 2007 (c. 11), s. 84(4)(5), Sch. 22 para. 7, **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 2(c)

**Marginal Citations**

**M10** 1970 c. 9.

*Assessments, claims etc.*

**149 Assessments founded on fraudulent or negligent conduct.**

(1) The following section shall be substituted for section 36 of the Taxes Management Act 1970—

**“36 Fraudulent or negligent conduct.**

- (1) An assessment on any person (in this section referred to as “the person in default”) for the purpose of making good to the Crown a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than twenty years after the end of the chargeable period to which the assessment relates.
- (2) Where the person in default is an individual who carried on a trade or profession in partnership with another individual, or with other persons at least one of whom is an individual, at any time in the year for which the assessment is made, an assessment in respect of the profits or gains of the trade or profession for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or, as the case may be, on any of his partners who is an individual.
- (3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by the Taxes Acts.”

(2) Sections 37 to 39 (special provisions as to “neglect”) and section 41 (leave required for certain assessments) of the Taxes Management Act 1970 shall cease to have effect.

(3) The words “section 36” shall be substituted—

- (a) for the words “sections 36, 37 and 39” in section 30(6) of the <sup>M11</sup>Taxes Management Act 1970 (tax repaid in error etc.),
- (b) for the words “sections 37 to 39” in section 118(3) of that Act (effect under law of Scotland of assessment in partnership name),
- [<sup>F345</sup>(c) for the words “sections 36 and 39” in paragraph 10(1) of Schedule 13 to the Taxes Act 1988 (assessments to advance corporation tax),] and
- <sup>F346</sup>(d) .....

(4) The words “ fraudulent or negligent conduct ” shall be substituted—

- (a) for the words “fraud, wilful default or neglect” in—

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- (i) section 37A of the Taxes Management Act 1970 (married couples),
  - (ii) section 40(2) of that Act (assessment on personal representatives),  
and
  - (iii) paragraph 9 of Schedule 16A to the <sup>M12</sup>Finance Act 1973 and of  
Schedule 19A to the Taxes Act 1988 (Lloyd's), and
- <sup>F347</sup>(b) .....
- (5) In section 105 of the Taxes Management Act 1970 (admissibility of evidence), for the words “fraud or default” and the words “fraud or wilful default” there shall be substituted the words “fraudulent conduct”.
  - (6) In paragraph 9 of Schedule 16A to the Finance Act 1973 and of Schedule 19A to the Taxes Act 1988, for “37, 40 and 41” there shall be substituted “and 40”.
  - (7) Nothing in this section shall affect the making of assessments—
    - (a) for years of assessment before the year 1983-84, or
    - (b) for accounting periods which ended before 1st April 1983.

#### Textual Amendments

**F345** S. 149(3)(c) repealed (31.7.1998 with effect in accordance with [Sch. 3](#) of the amending Act) by 1998 c. 36, s. 165, [Sch. 27 Pt. III\(2\)](#), note

**F346** S. 149(3)(d) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F347** S. 149(4)(b) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 2](#) (with [Sch. 2](#))

#### Marginal Citations

**M11** 1970 c.9.

**M12** 1973 c. 51.

### 150 Further assessments: claims etc.

- (1) The following sections shall be inserted after section 43 of the Taxes Management Act 1970—

#### “43A Further assessments: claims etc.

- (1) This section applies where—
  - (a) by virtue of section 29(3) of this Act an assessment is made on any person for a chargeable period, and
  - (b) the assessment is not made for the purpose of making good to the Crown any loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf.
- (2) Without prejudice to section 43(2) above but subject to section 43B below, where this section applies—
  - (a) any relevant claim, election, application or notice which could have been made or given within the time allowed by the Taxes Acts may be made or given at any time within one year from the end of the chargeable period in which the assessment is made, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (b) any relevant claim, election, application or notice previously made or given may at any such time be revoked or varied—
- (i) in the same manner as it was made or given, and
  - (ii) by or with the consent of the same person or persons who made, gave or consented to it (or, in the case of any such person who has died, by or with the consent of his personal representatives),
- except where by virtue of any enactment it is irrevocable.
- (3) For the purposes of this section and section 43B below, a claim, election, application or notice is relevant in relation to an assessment for a chargeable period if—
- (a) it relates to that chargeable period or is made or given by reference to an event occurring in that chargeable period, and
  - (b) it or, as the case may be, its revocation or variation has or could have the effect of reducing any of the liabilities mentioned in subsection (4) below.
- (4) The liabilities referred to in subsection (3) above are—
- (a) the increased liability to tax resulting from the assessment,
  - (b) any other liability to tax of the person concerned for—
    - (i) the chargeable period to which the assessment relates, or
    - (ii) any chargeable period which follows that chargeable period and ends not later than one year after the end of the chargeable period in which the assessment is made.
- (5) Where a claim, election, application or notice is made, given, revoked or varied by virtue of subsection (2) above, all such adjustments shall be made, whether by way of discharge or repayment of tax or the making of assessments or otherwise, as are required to take account of the effect of the taking of that action on any person's liability to tax for any chargeable period.
- (6) The provisions of this Act relating to appeals against decisions on claims shall apply with any necessary modifications to a decision on the revocation or variation of a claim by virtue of subsection (2) above.

### **43B Limits on application of section 43A.**

- (1) If the effect of the exercise by any person of a power conferred by section 43A(2) above—
- (a) to make or give a claim, election, application or notice, or
  - (b) to revoke or vary a claim, election, application or notice previously made or given,
- would be to alter the liability to tax of another person, that power may not be exercised except with the consent in writing of that other person or, where he has died, his personal representatives.
- (2) Where—
- (a) a power conferred by subsection (2) of section 43A above is exercised in consequence of an assessment made on a person, and
  - (b) the exercise of the power increases the liability to tax of another person,

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that section shall not apply by reason of any assessment made because of that increased liability.

(3) In any case where—

- (a) one or more relevant claims, elections, applications or notices are made, given, revoked or varied by virtue of the application of section 43A above in the case of an assessment, and
- (b) the total of the reductions in liability to tax which, apart from this subsection, would result from the action mentioned in paragraph (a) above would exceed the additional liability to tax resulting from the assessment,

the excess shall not be available to reduce any liability to tax.

(4) Where subsection (3) above has the effect of limiting either the reduction in a person's liability to tax for more than one period or the reduction in the liability to tax of more than one person, the limited amount shall be apportioned between the periods or persons concerned—

- (a) except where paragraph (b) below applies, in such manner as may be specified by the inspector by notice in writing to the person or persons concerned, or
- (b) where the person concerned gives (or the persons concerned jointly give) notice in writing to the inspector within the relevant period, in such manner as may be specified in the notice given by the person or persons concerned.

(5) For the purposes of paragraph (b) of subsection (4) above the relevant period is the period of 30 days beginning with the day on which notice under paragraph (a) of that subsection is given to the person concerned or, where more than one person is concerned, the latest date on which such notice is given to any of them.”

(2) This section shall apply in relation to any assessment notice of which is issued on or after the day on which this Act is passed.

## 151 Assessment of trustees etc.

(1) Income tax chargeable in respect of income arising to the trustees of a settlement, or to the personal representatives of a deceased person, may be assessed and charged on and in the name of any one or more of the relevant trustees or, as the case may be, the relevant personal representatives.

[<sup>F348</sup>(2) In this section “the relevant trustees”—

- (a) in relation to any income, <sup>F349</sup>... means [<sup>F350</sup>the trustees of the settlement in the year of assessment in which the income arises] and any subsequent trustees of the settlement; <sup>F351</sup>...

<sup>F351</sup>(b) .....

and “the relevant personal representatives” has a corresponding meaning.]

<sup>F352</sup>(3) .....

(4) This section shall be deemed always to have had effect.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

### Textual Amendments

- F348** S. 151(2) substituted (31.7.1998 with effect as mentioned in [Sch. 14 para. 7\(3\)\(4\)\(5\)](#) of the amending Act) by [1998 c. 36, s. 86, Sch. 14 para. 6](#)
- F349** Words in s. 151(2)(a) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 281\(2\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F350** Words in s. 151(2)(a) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 para. 29\(1\)\(2\)](#)
- F351** S. 151(2)(b) and preceding word repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 281\(3\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F352** S. 151(3) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 281\(4\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Distress and poinding etc.*

## 152 Distress for non-payment of tax.

- (1) Section 61 of the <sup>M13</sup>Taxes Management Act 1970 (distress) shall be amended as follows.
- (2) In subsection (1), for the words “the collector shall” onwards there shall be substituted the words “the collector may distrain upon the goods and chattels of the person charged (in this section referred to as “the person in default”).”
- (3) In subsection (2), for the words from “a collector” to “Commissioners” there shall be substituted the words “a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, may issue a warrant in writing authorising a collector to”.
- (4) In subsection (4), for the words “neglecting or refusing to pay” there shall be substituted the words “in default”.
- (5) In subsection (5)—
  - (a) for the word “aforesaid” there shall be substituted the words “in default”,
  - (b) the words “within the said five days” shall be omitted,
  - (c) for the words from “two or more inhabitants of the parish” to “sufficient persons” there shall be substituted the words “one or more independent persons appointed by the collector”, and
  - (d) the words from “The costs” to “the collector, and” shall be omitted.
- (6) The following subsection shall be added after that subsection—
 

“(6) The Treasury may by regulations make provision with respect to—

  - (a) the fees chargeable on or in connection with the levying of distress, and
  - (b) the costs and charges recoverable where distress has been levied; and any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.”
- (7) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.



*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**Marginal Citations**

M13 1970 c. 9.

**153 Priority in cases of distraint by others.**

(1) Section 62 of the <sup>M14</sup>Taxes Management Act 1970 (priority of claim for tax) shall be amended as follows.

(2) In subsection (1)—

- (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any goods or chattels belonging to any person (in this section referred to as “the person in default”) are”,
- (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods or chattels may not be so taken unless on demand made by the collector”, and
- (c) for the words “arrears of tax” onwards there shall be substituted the words “such sums as have fallen due at or before the date of seizure.”

(3) The following subsection shall be inserted after that subsection—

“(1A) The sums referred to in subsection (1) above are—

- (a) sums due from the person in default on account of deductions of income tax from emoluments paid during the period of twelve months next before the date of seizure, being deductions which the person in default was liable to make under section 203 of the principal Act (pay as you earn) less the amount of the repayments of income tax which he was liable to make during that period; and
- (b) sums due from the person in default in respect of deductions required to be made by him for that period under section 559 of the principal Act (sub-contractors in the construction industry).”

(4) In subsection (2)—

- (a) for the words from the beginning to “the collector shall” there shall be substituted the words “If the sums referred to in subsection (1) above are not paid within ten days of the date of the demand referred to in that subsection, the collector may”,
- (b) for the words “shall proceed” there shall be substituted the words “may proceed”, and
- (c) for the words “the tax charged and claimed” there shall be substituted the words “those sums”.

**Marginal Citations**

M14 1970 c. 9.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

#### 154 Recovery of tax from debtor in Scotland.

- (1) Section 63 of the <sup>M15</sup>Taxes Management Act 1970 (recovery of tax in Scotland) shall be amended as follows.
- (2) In subsection (3), for the words “which relates to” onwards there shall be substituted the words “insofar as it relates to sums due in respect of—
  - (a) deductions of income tax which any person specified in the application was liable to make under section 203 of the principal Act (pay as you earn); or
  - (b) deductions required to be made under section 559 of the principal Act (sub-contractors in the construction industry) by any person specified in the application.”
- (3) The following subsection shall be added after that subsection—
  - “(4) In this section references to amounts of tax due and references to sums due in respect of deductions include references to amounts which are deemed to be—
    - (a) amounts of tax which the person is liable to pay by virtue of the Income Tax (Employments) Regulations 1973; or
    - (b) amounts which the person is liable to pay by virtue of the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1975.”

#### Marginal Citations

M15 1970 c. 9.

#### 155 Priority in cases of poinding etc. by others in Scotland.

- (1) Section 64 of the Taxes Management Act 1970 (priority of claim for tax in Scotland) shall be amended as follows.
- (2) In subsection (1)—
  - (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any moveable goods and effects belonging to any person (in this section referred to as “the person in default”) are”,
  - (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods and effects may not be so taken unless on demand made by the collector”, and
  - (c) for the words “the tax so in arrear” onwards there shall be substituted the words “such sums as have fallen due at or before the date of poinding or, as the case may be, other diligence or assignation.”
- (3) The following subsection shall be inserted after that subsection—
  - “(1A) The sums referred to in subsection (1) above are—
    - (a) sums due from the person in default on account of deductions of income tax from emoluments paid during the period of twelve months next before the date of poinding, being deductions which the person in default was liable to make under section 203 of the principal Act (pay

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as you earn) less the amount of the repayments of income tax which he was liable to make during that period; and

- (b) sums due from the person in default in respect of deductions required to be made by him for that period under section 559 of the principal Act (sub-contractors in the construction industry).”

(4) In subsection (2)—

- (a) for the words from the beginning to “the tax claimed shall” there shall be substituted the words “If the sums referred to in subsection (1) above are not paid within ten days of the date of the demand referred to in that subsection, the sums shall”, and
- (b) for the words “proceeding at his instance” there shall be substituted the word “proceedings”.

*Interest etc.*

## 156 Interest on overdue tax.

(1) In section 86 of the <sup>M16</sup>Taxes Management Act 1970, for subsection (3) and the words in subsection (4) preceding the Table there shall be substituted—

“(3) For the purposes of this section—

- (a) the reckonable date in relation to any tax charged by an assessment to income tax under Schedule E, and
- (b) subject to subsection (3A) below, the reckonable date in relation to tax charged by any other assessment to which this section applies, is the date on which the tax becomes due and payable.

(3A) Where an appeal has been made against an assessment and any of the tax charged by the assessment is due and payable on a date later than the date given by the Table in subsection (4) below, the reckonable date in relation to the tax so due and payable is the later of—

- (a) the date given by that Table, and
- (b) the date on which the tax would have been due and payable if there had been no appeal against the assessment (assuming in a case where the tax would not have been charged by the assessment if there had been no appeal that it was so charged).

(4) The Table referred to in subsection (3A) above is as follows—”.

(2) In section 55 of that Act—

- (a) in subsection (2), for the words “it were” onwards there shall be substituted the words “there had been no appeal.”,
- (b) in subsection (6), for paragraphs (a) and (b) there shall be substituted—
- “(a) in the case of a determination made on an application under subsection (3) above, other than an application made by virtue of subsection (3A) above, the date on which any tax the payment of which is not so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had been no appeal; and

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- (b) in the case of a determination made on an application under subsection (4) above—
- (i) the date on which any tax the payment of which ceases to be so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had been no appeal; and
- (ii) any tax overpaid shall be repaid.” and
- (c) for subsection (9) there shall be substituted—
- “(9) On the determination of the appeal—
- (a) the date on which any tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, be determined as if the tax were charged by an assessment—
- (i) notice of which was issued on the date on which the inspector issues to the appellant a notice of the total amount payable in accordance with the determination, and
- (ii) against which there had been no appeal; and
- (b) any tax overpaid shall be repaid.”
- (3) In section 56(9) of that Act, for the words “amount of” there shall be substituted the words “amount charged by”.
- (4) This section shall apply to tax charged by any assessment notice of which is issued after 30th July 1982.

**Marginal Citations**

**M16** 1970 c. 9.

**157 Effect of certain claims on interest.**

- (1) In relation to any tax charged by an assessment made under section 252(1) of the Taxes Act 1988 to recover corporation tax that becomes payable as a result of the making of a claim under section 240 of that Act, the reckonable date for the purposes of section 86 of the <sup>M17</sup>Taxes Management Act 1970 (in this section referred to as “section 86”) is the date which is given by paragraph 5 of the Table in subsection (4) of that section.
- (2) Subsections (3) and (4) below apply in any case where—
- (a) there is in any accounting period of a company (in this section referred to as “the later period”) an amount of surplus advance corporation tax, as defined in subsection (3) of section 239 of the Taxes Act 1988, and
- (b) pursuant to a claim under the said subsection (3), the whole or any part of that amount is treated for the purposes of the said section 239 as discharging liability for an amount of corporation tax for an earlier accounting period (in this section referred to as “the earlier period”), and

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- (c) if the claim under the said subsection (3) had not been made—
- (i) an amount of corporation tax assessed for the earlier period would carry interest in accordance with section 86, or
  - (ii) an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period.
- (3) In determining the amount of interest payable under section 86 on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from section 239(3) of the Taxes Act 1988 except so far as concerns interest for any time after the day following the expiry of nine months from the end of the later period.
- (4) Where, but for the claim under section 239(3) of the Taxes Act 1988, an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period, interest under section 86 shall be chargeable, in relation to any time not later than the day referred to in subsection (3) above, as if the claim had not been made and such an assessment had been made.
- (5) In relation to interest charged under section 86 by virtue of subsection (4) above, section 69 of the <sup>M18</sup>Taxes Management Act 1970 shall have effect with the substitution for the words following paragraph (c) of the words “as if it were tax charged and due and payable under an assessment”.
- (6) In this section—
- (a) subsection (1) above shall have effect where the claim under 240 of the Taxes Act 1988 is made on or after 14th March 1989, and
  - (b) subsections (2) to (5) above shall have effect where the claim under section 239(3) of that Act is made on or after that date,
- but this section shall not have effect in relation to corporation tax for any accounting period ending after the day which is the appointed day for the purposes of section 85 of the <sup>M19</sup>Finance (No.2) Act 1987.

#### Marginal Citations

**M17** 1970 c. 9.

**M18** 1970 c. 9.

**M19** 1987 c. 51.

### 158 Small amounts of interest.

- (1) In the Taxes Management Act 1970—
- (a) section 86(6) (remission of interest payable on overdue income tax, capital gains tax or corporation tax where interest would not exceed £30), and
  - (b) section 87(4) (no interest payable on overdue advance corporation tax or income tax on company payments where interest would not exceed £30),
- shall cease to have effect.
- (2) The words “of not less than £25” in—
- (a) [<sup>F353</sup>section 283(1) of the <sup>M20</sup>Taxation of Chargeable Gains Act 1992] (no repayment supplement where overdue repayment of capital gains tax less than £25), and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- (b) section 824(1)(a) and (b) and (5) of the Taxes Act 1988 (no repayments supplement where overdue repayment of income tax etc. less than £25),
- and the words “of not less than £100” in section 825(2) of the Taxes Act 1988 (no repayment supplement where overdue repayment of company tax less than £100) shall cease to have effect.
- (3) Paragraph (a) of subsection (1) above shall have effect—
- (a) in relation to income tax under Schedule E, where the demand for the tax is made on or after the appointed day, and
- (b) in any other case, where the tax is charged by an assessment notice of which is issued on or after the appointed day.
- (4) Paragraph (b) of that subsection shall have effect where the tax is charged by an assessment relating to an accounting period beginning on or after the appointed day.
- (5) Subsection (2) above shall have effect in relation to repayments of tax made on or after the appointed day.
- (6) In this section “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint; and different days may be appointed for different enactments or for different purposes of the same enactment.

#### Textual Amendments

**F353** Words in s. 158(2)(a) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 10 para. 19(3)** (with ss. 60, 101(1), 201(3))

#### Marginal Citations

**M20** 1975 c. 45.

### [<sup>F354</sup>159 Interest on tax in case of failure or error.

- (1) Section 88 of the <sup>M21</sup>Taxes Management Act 1970 (interest on tax recovered to make good loss due to taxpayer’s fault) shall be amended as follows.
- (2) In subsection (1), for the words “the fraud, wilful default or neglect of any person” there shall be substituted the words—
- “(a) a failure to give a notice, make a return or produce or furnish a document or other information required by or under the Taxes Acts, or
- (b) an error in any information, return, accounts or other document delivered to an inspector or other officer of the Board.”.
- (3) The following subsection shall be added at the end—
- “(7) In paragraph (a) of subsection (1) above the reference to a failure to do something includes, in relation to anything required to be done at a particular time or within a particular period, a reference to a failure to do it at that time or within that period; and, accordingly, section 118(2) of this Act shall not apply for the purposes of that paragraph.”

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- (4) This section shall have effect in relation to failures occurring, and errors in any information or documents delivered, on or after the day on which this Act is passed.]

#### Textual Amendments

**F354** S. 159 repealed (29.4.1996 with effect as specified in [Sch. 18 para. 17](#) of the amending Act) by [1996 c. 8, s. 205, Sch. 41 Pt. V\(8\)](#), note

#### Marginal Citations

**M21** [1970 c. 9](#).

### 160 Determinations under TMA s. 88.

<sup>F355</sup>[(1) In subsection (1) of section 88 of the Taxes Management Act 1970, for the words “shall carry” there shall be substituted the words “shall, if an inspector or the Board so determine, carry”.]

[<sup>F355</sup>(2) The following section shall be inserted after that section—

#### “ Determinations under section 88.

- (1) Notice of a determination under section 88 above shall be served on the person liable to pay the interest to which it relates and shall specify—
  - (a) the date on which it is issued,
  - (b) the amount of the tax which carries interest and the assessment by which that tax was charged,
  - (c) the date when for the purposes of section 88 above that tax ought to have been paid, and
  - (d) the time within which an appeal against the determination may be made.
- (2) After the notice of a determination under section 88 above has been served the determination shall not be altered except in accordance with this section.
- (3) A determination under section 88 above may be made at any time—
  - (a) within six years after the end of the chargeable period for which the tax carrying the interest is charged (or, in the case of development land tax, of the financial year in which the liability for that tax arose), or
  - (b) within three years after the date of the final determination of the amount of that tax.
- (4) An appeal may be brought against a determination under section 88 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (5) On an appeal against a determination under section 88 above section 50(6) to (8) of this Act shall not apply but the Commissioners may—
  - (a) if it appears to them that the tax carries no interest under that section, set the determination aside,

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- (b) if the determination appears to them to be correct, confirm the determination, or
- (c) if the determination appears to them to be incorrect as to the amount of tax or the date on which the tax ought to have been paid, revise the determination accordingly.”]
- (3) In section 70 (certificates) of the <sup>M22</sup>Taxes Management Act 1970, for subsection (3) there shall be substituted—

“(3) A certificate of the inspector or any other officer of the Board that it has been determined that tax carries interest under section 88 of this Act, together with a certificate of the collector that payment of the interest has not been made to him, or, to the best of his knowledge and belief, to any other collector, or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence—

- (a) that interest is chargeable on the tax from the date when for the purposes of section 88 of this Act the tax ought to have been paid, and
- (b) that the sum mentioned in the certificate is unpaid and is due to the Crown;

and any document purporting to be such a certificate as is mentioned in this subsection shall be deemed to be such a certificate unless the contrary is proved.”

- [<sup>F355</sup>(4) In section 113 of that Act (form of documents), the following subsection shall be inserted after subsection (1B)—

“(1C) Where an officer of the Board has decided that an amount of tax carries interest under section 88 of this Act and has taken the decisions needed for arriving at the date when for the purposes of that section that tax ought to have been paid, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination on the person liable to the interest.”]

- (5) In section 114 of that Act (want of form not to invalidate), after the word “assessment”, in each place where it occurs, there shall be inserted the words “or determination”.

- [<sup>F356</sup>(6) In paragraph 5 of Schedule 3 to that Act (rules for assigning proceedings to Commissioners), the following entry shall be inserted in the first column after the entry relating to an appeal against an assessment to capital gain tax— “ An appeal against a determination under section 88 of this Act. ”]

#### Textual Amendments

**F355** S. 160(1)(2)(4) repealed (29.4.1996 with effect as specified in [Sch. 18 para. 17](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(8\)](#), note

**F356** S. 160(6) repealed (29.4.1996 with effect as mentioned in [Sch. 22 para. 12](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(12\)](#), note

#### Marginal Citations

**M22** 1970 c. 9.



*Status: Point in time view as at 13/08/2009.*

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[<sup>F357</sup> **161 Tax carrying interest under TMA ss. 86 and 88.**

The following subsection shall be substituted for section 88(3) of the <sup>M23</sup>Taxes Management Act 1970—

“(3) Where it is finally determined that any tax carries interest under this section, the tax shall carry no interest under section 86 or 86A above (and, accordingly, any interest under either of those sections which has been paid before the final determination shall be set off against the amount of the interest under this section); and for the purposes of this subsection a determination that tax carries interest is not final until it can no longer be varied, whether by any Commissioners on appeal or by the order of any court.”]

**Textual Amendments**

**F357** S. 161 repealed (29.4.1996 with effect as specified in [Sch. 18 para. 17](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(8\)](#), note

**Marginal Citations**

**M23** 1970 c. 9.

*Penalties*

**162 Failure to make return.**

(1) Section 93 of the Taxes Management Act 1970 (failure to comply with notice to make return for income tax or capital gains tax) shall be amended as follows.

(2) In subsection (1) (initial and daily penalties), for paragraphs (a) and (b) there shall be substituted—

- “(a) to a penalty not exceeding £300, and
- (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (a) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”

(3) The following subsection shall be substituted for subsection (2)—

“(2) If a failure by a person to comply with a notice such as is referred to in subsection (1) above continues after the end of the year of assessment following that during which it was served then, without prejudice to any penalty under subsection (1) above, he shall be liable to a penalty of an amount not exceeding so much of the tax with which he is charged (whether for one or for more than one year of assessment) in assessments—

- (a) based wholly or partly on any income or chargeable gains that ought to have been included in the return required by the notice, and
- (b) made after the end of the year next following the year of assessment in which the notice was served,

as is attributable to the income or chargeable gains that ought to have been so included.”

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- (4) The following subsection shall be substituted for subsection (5)—
- “(5) No penalty shall be imposed under subsection (1) above in respect of a failure at any time after the failure has been remedied.”
- (5) The following subsection shall be substituted for subsection (7)—
- “(7) If the person on whom a notice is served proves that there was no income or chargeable gain to be included in the return, the penalty under this subsection shall not exceed £100.”
- (6) This section shall apply in relation to any failure to comply with a notice served on or after 6th April 1989.

### 163 Incorrect return, accounts etc.

- (1) In—
- <sup>F358</sup>(a) . . . . .
- (b) section 96(1) of that Act (incorrect return etc. for corporation tax), for the words “the aggregate” onwards there shall be substituted the words “the amount of the difference specified in subsection (2) below.”
- (2) This section shall apply in relation to returns, statements, declarations or accounts delivered, made or submitted on or after the day on which this Act is passed.

#### Textual Amendments

**F358** S. 163(1)(a) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 5\(5\)](#)

### 164 Special returns, information etc.

- (1) Section 98 of the Taxes Management Act 1970 (special returns, information etc.) shall be amended as follows.
- (2) In subsection (1) (initial and daily penalties)—
- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
- (b) for the words “subsection (3)” onwards there shall be substituted the words “subsections (3) and (4) below—
- (i) to a penalty not exceeding £300, and
- (ii) if the failure continues after a penalty is imposed under paragraph (i) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (i) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) In subsection (2) (maximum penalty for information given fraudulently or negligently)—
- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and

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- (b) for the words “ £250, or, in the case of fraud, £500” there shall be substituted “ £3,000”.
- (4) The following subsections shall be substituted for subsection (3)—
- “(3) No penalty shall be imposed under subsection (1) above in respect of a failure within paragraph (a) of that subsection at any time after the failure has been remedied.
- (4) No penalty shall be imposed under paragraph (ii) of subsection (1) above in respect of a failure within paragraph (b) of that subsection at any time after the failure has been remedied.”
- (5) In the Table—
- (a) in the first column, in the entry relating to Part III of the <sup>M24</sup>Taxes Management Act 1970, the words “, except sections 16 and 24(2)” shall be omitted;
- (b) the entries relating to sections 38(5) and 42 of the Taxes Act 1988 shall be moved from the second column to the appropriate place in the first column; and
- (c) the entry relating to section 481(5)(k) of that Act shall be omitted from the first column and an entry relating to section 482(2) of that Act shall be inserted at the appropriate place in the second column.
- (6) In consequence of the amendment made by subsection (5)(a) above section 16(6) of the Taxes Management Act 1970 shall cease to have effect.
- (7) This section shall apply in relation to—
- (a) any failure to comply with a notice or to furnish information, give a certificate or produce a document or record beginning on or after the day on which this Act is passed, and
- (b) the furnishing, giving, producing or making of any incorrect information, certificate, document, record or declaration on or after that day.

**Marginal Citations**

**M24** 1970 c.9.

**165 Special penalties in the case of certain returns.**

- (1) The following section shall be inserted after section 98 of the Taxes Management Act 1970—

**“98A Special penalties in the case of certain returns.**

- (1) Regulations under section 203(2) (PAYE) or 566(1) (sub-contractors) of the principal Act may provide that this section shall apply in relation to any specified provision of the regulations.
- (2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—
- (a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, and

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- (b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of 19th April after the end of that year.
- (3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—
- (a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, and
  - (b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty.
- (4) Where this section applies in relation to a provision of regulations, any person who fraudulently or negligently makes an incorrect return of a kind mentioned in the provision shall be liable to a penalty not exceeding the difference between—
- (a) the amount payable by him in accordance with the regulations for the year of assessment to which the return relates, and
  - (b) the amount which would have been so payable if the return had been correct.”
- [<sup>F359</sup>(2) In relation to a failure to make a return beginning before such day as the Treasury may by order made by statutory instrument appoint, section 98A(2) shall have effect with the substitution of the following paragraph for paragraph (a)—
- “(a) to—
- (i) a penalty not exceeding twelve times the relevant monthly amount, and
  - (ii) if the failure continues after a penalty is imposed under sub-paragraph (i) above, a further penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this sub-paragraph has already been imposed.”.]

#### Textual Amendments

**F359** S. 165(2) repealed (with effect in relation to failures beginning on or after 20.5.1995) by [Finance Act 1989 \(c. 26, SIF 63:1\)](#), ss. 165(2), 187(1), [Sch. 17 Pt. VIII](#) Note 7; [S.I. 1994/2508](#), [art. 2](#)

#### 166 Assisting in preparation of incorrect return etc.

- (1) The following section shall be substituted for section 99 of the <sup>M25</sup>Taxes Management Act 1970—

##### “99 Assisting in preparation of incorrect return etc.

Any person who assists in or induces the preparation or delivery of any information, return, accounts or other document which—

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- (a) he knows will be, or is or are likely to be, used for any purpose of tax, and
  - (b) he knows to be incorrect,
- shall be liable to a penalty not exceeding £3,000.”

(2) This section shall apply in relation to assistance and inducements occurring on or after the day on which this Act is passed.

#### **Marginal Citations**

**M25** 1970c. 9.

### **167 Determination of penalties.**

The following sections shall be substituted for section 100 of the <sup>M26</sup>Taxes Management Act 1970—

#### **“100 Determination of penalties by officer of Board.**

- (1) Subject to subsection (2) below and except where proceedings for a penalty have been instituted under section 100D below or a penalty has been imposed by the Commissioners under section 53 of this Act, an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.
- (2) Subsection (1) above does not apply where the penalty is a penalty under—
  - (a) section 93(1) above as it has effect before the amendments made by section 162 of the Finance Act 1989 or section 93(1)(a) above as it has effect after those amendments,
  - (b) section 94(1) above as it has effect before the substitution made by section 83 of the Finance (No.2) Act 1987,
  - (c) section 98(1) above as it has effect before the amendments made by section 164 of the Finance Act 1989 or section 98(1)(i) above as it has effect after those amendments, or
  - (d) paragraph (a)(i) of section 98A(2) above as it has effect by virtue of section 165(2) of the Finance Act 1989.
- (3) Notice of a determination of a penalty under this section shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
- (4) After the notice of a determination under this section has been served the determination shall not be altered except in accordance with this section or on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount of a penalty determined under this section is or has become insufficient the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.

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- (6) In any case where—
- (a) a determination under this section is of a penalty under section 94(6) above, and
  - (b) after the determination has been made it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount which was taken into account as the relevant amount of tax is or has become excessive,
- the determination shall be revised so that the penalty is set at the amount which is correct; and, where more than the correct amount has already been paid, the appropriate amount shall be repaid.

#### **100A Provisions supplementary to section 100.**

- (1) Where a person who has incurred a penalty has died, a determination under section 100 above which could have been made in relation to him may be made in relation to his personal representatives, and any penalty imposed on personal representatives by virtue of this subsection shall be a debt due from and payable out of his estate.
- (2) A penalty determined under section 100 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (3) A penalty determined under section 100 above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

#### **100B Appeals against penalty determinations.**

- (1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but—
  - (a) in the case of a penalty which is required to be of a particular amount, the Commissioners may—
    - (i) if it appears to them that no penalty has been incurred, set the determination aside,
    - (ii) if the amount determined appears to them to be correct, confirm the determination, or
    - (iii) if the amount determined appears to them to be incorrect, increase or reduce it to the correct amount,
  - (b) in the case of any other penalty, the Commissioners may—
    - (i) if it appears to them that no penalty has been incurred, set the determination aside,
    - (ii) if the amount determined appears to them to be appropriate, confirm the determination,

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- (iii) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or
  - (iv) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (3) Without prejudice to section 56 of this Act, an appeal from a decision of the Commissioners against the amount of a penalty which has been determined under section 100 above or this section shall lie, at the instance of the person liable to the penalty, to the High Court or, in Scotland, to the Court of Session as the Court of Exchequer in Scotland; and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this section.

#### **100C Penalty proceedings before Commissioners.**

- (1) An officer of the Board authorised by the Board for the purposes of this section may commence proceedings before the General or Special Commissioners for any penalty to which subsection (1) of section 100 above does not apply by virtue of subsection (2) of that section.
- (2) Proceedings under this section shall be by way of information in writing, made to the Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they shall hear and decide each case in a summary way.
- (3) Any penalty determined by the Commissioners in proceedings under this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this section shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
- (a) by any party on a question of law, and
  - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (5) On any such appeal the court may—
- (a) if it appears that no penalty has been incurred, set the determination aside,
  - (b) if the amount determined appears to be appropriate, confirm the determination,
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate, or
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

#### **100D Penalty proceedings before court.**

- (1) Where in the opinion of the Board the liability of any person for a penalty arises by reason of the fraud of that or any other person, proceedings for the penalty

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may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.

- (2) Proceedings under this section which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of that Act shall be instituted—
- (a) in England and Wales, in the name of the Attorney General,
  - (b) in Scotland, in the name of the Lord Advocate, and
  - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Any proceedings under this section instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.
- (4) If in proceedings under this section the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.”

**Marginal Citations**

M26 1970 c. 9.

**168 Amendments consequential on section 167.**

- (1) In consequence of the amendment made by section 167 above the <sup>M27</sup>Taxes Management Act 1970 shall be amended in accordance with subsections (2) to (8) below.
- (2) In section 20A (power to call for papers of tax accountant)—
- (a) in subsection (1), for the words “awarded against him a penalty incurred by” there shall be substituted the words “a penalty imposed on”,
  - (b) in subsection (2), for the word “award” in the first place where it occurs there shall be substituted the word “penalty” and for that word in the second place where it occurs there shall be substituted the word “imposition”, and
  - (c) in subsection (4), for the words “award against” there shall be substituted the words “imposition on” and for the word “award” there shall be substituted the word “penalty”.
- <sup>F360</sup>(3) .....
- (4) In section 102 (mitigation of penalties), for the words “recovery thereof” there shall be substituted the words “a penalty”.
- (5) In section 105 (evidence)—
- (a) the following paragraph shall be substituted for paragraph (a) of subsection (1)



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- “(a) pecuniary settlements may be accepted instead of a penalty being determined, or proceedings being instituted, in relation to any tax,”
- (b) in paragraph (b) of subsection (2), for the words “sum” onwards there shall be substituted the words “tax due from him”, and
- (c) after that paragraph there shall be inserted the words “and
- (c) any proceedings for a penalty or on appeal against the determination of a penalty.”
- (6) In section 112 (loss of documents etc.), the following subsection shall be added at the end—
- “(3) The references in subsection (1) above to assessments to tax include references to determinations of penalties; and in its application to such determinations the proviso to that subsection shall have effect with the appropriate modifications.”
- (7) In section 113 (form of documents)—
- (a) the following subsection shall be inserted after subsection (1C)—
- “(1D) Where an officer of the Board has decided to impose a penalty under section 100 of this Act and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination on the person liable to the penalty.” and
- (b) in subsection (3)—
- (i) after the words “Every assessment,” there shall be inserted the words “determination of a penalty,”
- (ii) after the words “notice of assessment” there shall be inserted the words “, of determination”, and
- (iii) after the words “levying tax” there shall be inserted the words “or determining a penalty”.
- [<sup>F361</sup>(8) In paragraph 5 of Schedule 3 (rules for assigning proceedings to Commissioners), for the words “section 100(4)” there shall be substituted the words “section 100C or an appeal under section 100B against the determination of a penalty”.]
- (9) In section 41 of the <sup>M28</sup>Development Land Tax Act 1976 (administration of development land tax) the following subsection shall be inserted after subsection (1)—
- “(1A) Nothing in sections 167 to 169 of the Finance Act 1989 shall apply to penalties relating to development land tax.”

#### Textual Amendments

**F360** S. 168(3) repealed (1.9.1994) by S.I. 1994/1813, reg. 2(2), Sch. 2 Pt. I

**F361** S. 168(8) repealed (29.4.1996 with effect as mentioned in Sch. 22 para. 12 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(12), note

#### Marginal Citations

**M27** 1970 c.9.

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

**M28** 1976 c. 24.

**169 Time limits.**

(1) The following section shall be substituted for section 103 of the <sup>M29</sup>Taxes Management Act 1970—

**“103 Time limits for penalties.**

(1) Subject to subsection (2) below, where the amount of a penalty is to be ascertained by reference to tax payable by a person for any period, the penalty may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the Commissioners or a court—

- (a) at any time within six years after the date on which the penalty was incurred, or
- (b) at any later time within three years after the final determination of the amount of tax by reference to which the amount of the penalty is to be ascertained.

(2) Where the tax was payable by a person who has died, and the determination would be made in relation to his personal representatives, subsection (1)(b) above does not apply if the tax was charged in an assessment made later than six years after the end of the chargeable period for which it was charged.

(3) A penalty under section 99 of this Act may be determined by an officer of the Board, or proceedings for such a penalty may be commenced before a court, at any time within twenty years after the date on which the penalty was incurred.

(4) A penalty to which neither subsection (1) nor subsection (3) above applies may be so determined, or proceedings for such a penalty may be commenced before the Commissioners or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred.”

(2) The amendment made by subsection (1) above shall not affect the application of section 103(4) of the <sup>M30</sup>Taxes Management Act 1970 to proceedings under section 100 of that Act as it has effect before the amendment made by section 167 above.

**Marginal Citations**  
**M29** 1970c. 9.  
**M30** 1970 c. 9.

**170 Up-rating of certain penalties.**

[<sup>F362</sup>(1) In section 23(8) of the Taxes Act 1988 (maximum penalty for agents failing to make certain payments on behalf of principals), for “£50” there shall be substituted “£300”.]

<sup>F363</sup>(2) .....

<sup>F364</sup>(3) .....

(4) In—

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Part II. (See end of Document for details)*

- F365(a) .....
- F365(b) .....
- (c) section 658(5) of that Act (maximum penalty for false statements or representations relating to purchased life annuities), for “£500” there shall be substituted “£3,000”.
- (5) In paragraph 2(4) of Schedule 19A to that Act and Schedule 16A to the <sup>M31</sup>Finance Act 1973 (maximum penalty for incorrect return by Lloyd’s agent), for the words “£500 in the case of fraud and £250 in the case of negligence” there shall be substituted “£3,000”.
- (6) This section shall apply in relation to things done or omitted on or after the day on which this Act is passed.

#### Textual Amendments

**F362** S. 170(1) repealed (1.5.1995 with effect as mentioned in s. 39(4)(5) of the amending Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(1)**, note

**F363** S. 170(2) repealed (16.7.1992 with effect in accordance with s. 32 of the repealing Act) by **Finance (No. 2) Act 1992 (c. 48)**, ss. 32, 82, **Sch. 18 Pt. VII(4)**

**F364** S. 170(3) repealed (6.4.2007) by **Income Tax Act 2007 (c. 3)**, s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

**F365** S. 170(4)(a)(b) repealed (6.4.2006) by **Finance Act 2004 (c. 12)**, **Sch. 42 Pt. 3** (with Sch. 36)

#### Marginal Citations

**M31** 1973 c. 51.

**Status:**

Point in time view as at 13/08/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1989, Part II.