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## SCHEDULES

### SCHEDULE 11

Section 90.

#### TAXATION PROVISIONS

##### *General*

- 1 (1) Subject to sub-paragraphs (2) and (3) below, the following provisions shall apply for the purposes of the Corporation Tax Acts, namely—
- (a) all the trades or parts of trades carried on by the existing bodies which are transferred by this Act to successor companies shall be treated as having been, at the time of their commencement and at all times since that time, separate trades carried on by those companies respectively;
  - (b) the trade carried on by each of those companies after the transfer date shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried before that date;
  - (c) all property, rights and liabilities of an existing body which are transferred by this Act to a successor company shall be treated as having been, at the time when they became vested in that body and at all times since that time, property, rights and liabilities of that company; and
  - (d) anything done by an existing body in relation to property, rights and liabilities which are transferred by this Act to a successor company shall be deemed to have been done by that company.
- (2) Except in the case of an Area Board, there shall be made such apportionments of unallowed tax losses and of expenditure by reference to which capital allowances may be made as may be specified in the transferor's transfer scheme.
- (3) Where any property, rights and liabilities of an existing body in England and Wales which are transferred by this Act to a successor company became vested in that body by virtue of a qualifying transfer, or two or more successive qualifying transfers—
- (a) sub-paragraph (1)(c) above shall have effect as if the reference to the time when the property, rights and liabilities became vested in that body were a reference to the time when they became vested in the original transferor, that is to say, the transferor under the qualifying transfer or, as the case may be, the first qualifying transfers; and
  - (b) if the property, rights and liabilities became vested in the original transferor by virtue of a transfer made by a company in which, at the time of the transfer, the original transferor or another existing body in England or Wales held an interest, that interest shall be deemed to have been held at that time by the successor company.
- (4) Where any property, rights and liabilities of an existing body in England or Wales which are transferred by this Act to a successor company became vested in that body by virtue of a transfer made by a company in which, at the time of the transfer, that body or another body held an interest, that interest shall be deemed to have been held at that time by the successor company.

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(5) In this paragraph—

“capital allowance” has the same meaning as in the Tax Acts;

“the final accounting period” means the last complete accounting period of the relevant body, that is to say—

- (a) in the case of an existing body in England or Wales, the Electricity Council;
- (b) in the case of an existing body in Scotland, that body,

ending before that transfer date;

“qualifying transfer” means a transfer to an existing body in England and Wales by another such body;

“unallowed tax losses” means any losses, allowances or amounts which, as at the end of the final accounting period, are tax losses within the meaning given by section 400(2) of the 1988 Act;

and in construing sub-paragraphs (1) to (4) above, section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

(6) This paragraph shall have effect in relation to accounting periods beginning after the final accounting period.

#### *Chargeable gains*

2 (1) This paragraph applies where—

- (a) by virtue of a transfer of property, rights and liabilities effected by this Act to a successor company (in this paragraph referred to as “the transferee”), a company would, but for paragraph (1) above, cease to be a member of a group of which an existing body is a member; and
- (b) assets have been acquired by that company from that body or from any other member of that group.

(2) On the company ceasing to be a member of a group of which the transferee is a member, section 278 of the <sup>M1</sup>Income and Corporation Taxes Act 1970 (company ceasing to be a member of a group) shall apply as if any assets acquired at any time as mentioned in sub-paragraph (1) above had been acquired by the company from the transferee at that time.

(3) In this paragraph “group” has the meaning given by section 272 of the Income and Corporation Taxes Act 1970; and in construing this paragraph the provisions of section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

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**Marginal Citations**

**M1** 1970 c. 10.

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VALID FROM 06/03/1992

[<sup>F1</sup>2A In this Schedule “the 1992 Act” means the Taxation of Chargeable Gains Act 1992.]

#### Textual Amendments

**F1** Sch. 11 para. 2A added (6.3.1992 with effect for 1992-93 and subsequent years of assessment) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 20(1)**

#### *Roll-over relief*

- 3 (1) Where—
- (a) a held over gain would, but for the provisions of section 117 of the <sup>M2</sup>Capital Gains Act 1979, have been carried forward to a depreciating asset; and
  - (b) that asset is transferred by this Act to a successor company,
- that section shall have effect as if the gain had accrued to, and the claim for it to be held over had been made by, that company.
- (2) In this paragraph the expressions which are used in the said section 117 have the same meanings as in that section.

#### Marginal Citations

**M2** 1979 c. 14.

#### *Unallowed capital losses*

- 4 (1) Any unallowed capital losses of an existing body shall be treated as allowable capital losses accruing to the appropriate successor company on the disposal of an asset on the transfer date.
- (2) Immediately before the transfer date the unallowed capital losses of the Electricity Council shall be divided between the existing bodies in England and Wales; and there shall be allocated to each such body such proportion (if any) of those losses as is given by the formula—

$$\frac{A}{B}$$

where—

A is the amount which, but for section 511(2) of the 1988 Act and the corresponding earlier enactments, would have been the amount of the unallowed capital losses of that body;

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B is the aggregate of the amounts which, but for that section and those enactments, would have been the amounts of the unallowed capital losses of those bodies.

(3) In this paragraph—

“allowable capital losses” means losses which are allowable for the purposes of the <sup>M3</sup>Capital Gains Tax Act 1979;

“unallowed capital losses”, in relation to any body, means any allowable capital losses which have been accrued to that body before the transfer date, in so far as they have not been allowed as deductions from chargeable gains.

#### Marginal Citations

**M3** 1979 c. 14.

#### *Transaction in pursuance of section 68(2)(c)*

- 5 (1) Sub-paragraph (2) below applies to any disposal (within the meaning of the Capital Gains Tax Act 1979) which is effected, and sub-paragraphs (3) and (4) below apply to any lease which is granted, in pursuance of a provision included in a transfer scheme by virtue of section 68(2) of this Act.
- (2) A disposal to which this sub-paragraph applies shall be taken for the purposes of the Capital Gains Tax Act 1979 to be effected for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the disponer.
- (3) [<sup>F2</sup>Neither subsection (6)(a) of section 11 of the Capital Allowances Act 1990 (“the 1990 Act”) nor]subsection (6)(a) of section 37 of the <sup>M4</sup>Finance Act 1978 (capital allowances: long leases) shall . . . <sup>F3</sup>prevent the application of [<sup>F4</sup>section 11 or section 37]in any case where the lease is a lease to which this sub-paragraph applies.
- (4) Where, in the case of any machinery or plant which is a fixture and on the provision of which for the purposes of the transferor’s trade the transferor incurred capital expenditure, a lease of the relevant land (with or without other land) is a lease to which this sub-paragraph applies—
- (a) the lessor shall not be required to bring the disposal value of the machinery or plant into account in accordance with section 44 of the <sup>M5</sup>Finance Act 1971 [<sup>F5</sup>or section 24 of the 1990 Act](writing down allowances and balancing adjustments); and
  - (b) so far as relating to the bringing of disposal values into account, [<sup>F6</sup>section 44 of the Finance Act 1971, section 24 of the 1990 Act, Schedule 17 to the Finance Act 1985 and Chapter VI of Part II of the 1990 Act](capital allowances for fixtures) shall have effect as if—
    - (i) the capital expenditure incurred by the transferor had been incurred by the lessee on the provision of the machinery or plant wholly and exclusively for the purposes of the lessee’s trade; and
    - (ii) the machinery or plant had become a fixture, immediately after the grant of the lease.

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- (5) In sub-paragraph (4) above “the transferor” means the transferor under the transfer scheme in question and expressions which are used in Schedule 17 to the Finance Act 1985 [<sup>F7</sup>or Chapter VI of Part II of the 1990 Act] have the same meaning as in that Schedule [<sup>F7</sup>or Chapter]; and in construing that sub-paragraph the provisions of section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

#### Textual Amendments

- F2** Words inserted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(3\), Sch. 1 para. 11\(a\)](#)  
**F3** Word repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(4\)\(5\), Sch. 2](#)  
**F4** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(3\), Sch. 1 para. 11\(a\)](#)  
**F5** Words inserted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(3\), Sch. 1 para. 11\(b\)](#)  
**F6** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(3\), Sch. 1 para. 11\(c\)](#)  
**F7** Words inserted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(3\), Sch. 1 para. 11\(d\)](#)

#### Marginal Citations

- M4** 1978 c. 42.  
**M5** 1971 c. 68.

#### *Transfers in pursuance of Schedule 10*

- 6 Where any property, rights and liabilities to which a transfer effected by this Act relates are, in pursuance of Schedule 10 to this Act, transferred by the transferee to another successor company—
- the foregoing provisions of this Schedule shall have effect as if the transfer effected by this Act had been a transfer to the other successor company; and
  - anything which, in relation to the property, rights and liabilities transferred, was done by the transferee for the purposes of the transferee’s trade shall be deemed to have been done by the other successor company for the purposes of that company’s trade.

#### *Apportionments etc.*

- 7 (1) This paragraph applies where any apportionment or other matter arising under the foregoing provisions of this Schedule appears to be material as respects the liability to tax (for whatever period) or two or more successor companies.
- (2) Any question which arises as to the manner in which the apportionment is to be made or the matter to be dealt with shall be determined, for the purposes of tax of all the companies—
- in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;
  - in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and
  - in any other case, by the Special Commissioners.

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- (3) The Commissioners by whom the question falls to be determined shall make the determination in like manner as if it were an appeal except that all the companies shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.

*Securities of successor companies*

- 8 (1) Any share issued by a successor company in pursuance of section 71 or 80 of this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share.
- (2) Any debenture issued by a successor company in pursuance of section 71 or 80 of this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and
  - (b) wholly and exclusively for the purposes of the trade carried on by that company.

[<sup>F8</sup>and if any such debenture includes provision for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.]

**Textual Amendments**

**F8** Words in Sch. 11 para. 8(2) added(*retrospectively*) by Finance Act 1991 (c. 31, SIF 63:1), s.80.

*Extinguishment of liabilities: restriction of tax losses*

- 9 (1) Section 400(1) of the 1988 Act (write-off of government investment: restriction of tax losses) shall not have effect by virtue of section 80(1) of this Act; but in the case of any such extinguishment (whether or not it is a case as regards which the said section 400(1) would, but for the foregoing provisions of this sub-paragraph, have effect) the Secretary of State may, with the consent of the Treasury, from time to time, direct that such amount (“amount” including nil) as is specified in the direction shall be set off against the successor company’s tax losses as at the end of the accounting period ending last before the date of the direction.
- (2) In any direction under sub-paragraph (1) above it may further be provided that the balance of tax losses remaining after the set off shall be aggregated with the balance of another successor company’s (or other successor companies’) tax losses remaining after a direction under that sub-paragraph in respect of that other company (or directions in respect of those other companies) and the losses so aggregated apportioned between the companies in such manner as may be specified in the direction which makes such further provision.
- (3) No direction shall be given under sub-paragraph (1) above in relation to a successor company as a time when the company has ceased to be wholly owned by the Crown.

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- (4) For the purpose of sub-paragraphs (1) and (2) above, a successor company's tax losses at the end of the accounting period mentioned in the said sub-paragraph (1) are those referred to in paragraphs (a) to (e) of subsection (2) of the said section 400; and subsections (3) and (4) of that section shall have effect in relation to any set off under sub-paragraph (1) above as if—
- (a) any reference to subsection (1) of that section were a reference to sub-paragraph (1) above; and
  - (b) the reference in subsection (4) of that section to the write-off date were a reference to the date of the direction under sub-paragraph (1) above.
- (5) Subsection (6) of the said section 400 shall apply in relation to any such extinguishment as is mentioned in sub-paragraph (1) above as if the reference to the body in question were a reference to the company whose liabilities are so extinguished.
- (6) The trade carried on by a company whose liabilities are extinguished by virtue of section 80(1) of this Act shall, if the company's tax losses are aggregated and apportioned by virtue of sub-paragraph (2) above, be treated for the purposes of giving any relief under the Corporation Tax Acts in respect of the losses so apportioned as being, and having at all times been, the trade carried on by the successor companies to which the losses are apportioned.
- (7) In this paragraph "accounting period" has the same meaning as in the 1988 Act.

#### *Income tax exemption for certain interests*

- 10 The vesting in a successor company by this Act of a liability for any loan made to an existing body shall not affect any direction in respect of the loan given or having effect as if given by the Treasury under section 581 of the 1988 Act (income tax exemption for interest on foreign securities).

#### *Stamp Duty*

PROSPECTIVE

- 11 (1) No transfer effected by this Act shall give rise to any liability to stamp duty.
- (2) Stamp duty shall not be chargeable on a transfer scheme or, subject to sub-paragraph (3) below, on any instrument which is certified to the Board by the Secretary of State as having been made in pursuance of such a scheme.
- (3) No instrument which is certified as mentioned in sub-paragraph (2) above shall be taken as duly stamped unless—
- (a) it is stamped with the duty to which it would but for that sub-paragraph be liable; or
  - (b) it has, in accordance with section 12 of the <sup>M6</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (4) Stamp duty shall not be chargeable on any instrument which is made in pursuance of Schedule 10 to this Act.

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- (5) Stamp duty shall not be chargeable on any instrument by which the Secretary of State, or any nominee of the Treasury or the Secretary of State, transfers securities of a company to another company if—
- (a) either or both of the companies are successor companies; and
  - (b) each of the companies is, at the time when the instrument is made, wholly owned by the Crown.

**Marginal Citations**

**M6** 1891 c. 39.

*Stamp duty reserve tax*

- 12 (1) No agreement made for the purposes of or for purposes connected with a transfer scheme shall give rise to a charge to stamp duty reserve tax.
- (2) No agreement which is made in pursuance of Schedule 10 to this Act shall give rise to a charge to stamp duty reserve tax.
- (3) No agreement by which the Treasury or the Secretary of State, or any nominee of the Treasury or Secretary of State, agrees to transfer securities of a company to another company shall give rise to a charge to stamp duty reserve tax if—
- (a) either or both of the companies are successor companies; and
  - (b) each of the companies is, at the time when the agreement is made, wholly owned by the Crown.

*Interpretation etc.*

- 13 (1) In this Schedule—
- “the 1988 Act” means the <sup>M7</sup>Income and Corporation Tax Act 1988;
- “the Board” means the Commissioners of Inland Revenue;
- “existing body in England and Wales” means an Area Board, the Generating Board or the Electricity Council;
- “existing body in Scotland” means a Scottish board.
- (2) For the purposes of this Schedule a transfer, instrument or agreement shall be regarded as made in pursuance of Schedule 10 to this Act if the making of that transfer, instrument or agreement is required or authorised by or under paragraph 2 or 4 of that Schedule.

**Marginal Citations**

**M7** 1988 c. 1.



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