

*Status: Point in time view as at 12/01/2000.*

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## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

#### APPLICATION OF TAPER RELIEF

##### Textual Amendments

- F1** Sch. A1 inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 121(2), [Sch. 20](#)

##### *Introductory*

- 1 (1) Section 2A shall be construed subject to and in accordance with this Schedule.
- (2) The different provisions of this Schedule have effect for construing the other provisions of this Schedule, as well as for construing section 2A.

##### *Period for which an asset is held and relevant period of ownership*

- 2 (1) In relation to any gain on the disposal of a business or non-business asset, the period after 5th April 1998 for which the asset had been held at the time of its disposal is the period which—
- (a) begins with whichever is the later of 6th April 1998 and the time when the asset disposed of was acquired by the person making the disposal; and
  - (b) ends with the time of the disposal on which the gain accrued.
- (2) Where an asset is disposed of, its relevant period of ownership is whichever is the shorter of—
- (a) the period after 5th April 1998 for which the asset had been held at the time of its disposal; and
  - (b) the period of ten years ending with that time.
- (3) The following shall be disregarded for determining when a person is to be treated for the purposes of this paragraph as having acquired an asset, that is to say—
- (a) so much of section 73(1)(b) as treats the asset as acquired at a date before 6th April 1965; and
  - (b) sections 239(2)(b), 257(2)(b) and 259(2)(b).
- (4) Where the period after 5th April 1998 for which an asset had been held at the time of its disposal includes any period which, in accordance with any of paragraphs 10 to 12 below [<sup>F2</sup>or paragraph 4 of Schedule 5BA], is a period that does not count for the purposes of taper relief—
- (a) the qualifying holding period of the asset shall be treated for the purposes of section 2A as reduced by the length of the period that does not count or, as the case may be, of the aggregate of the periods that do not count; and
  - (b) the period that does not count or, as the case may be, every such period—

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- (i) shall be left out of account in computing for the purposes of sub-paragraph (2) above the period of ten years ending with the time of the asset's disposal; and
  - (ii) shall be assumed not to be comprised in the asset's relevant period of ownership.
- (5) Sub-paragraphs (1) to (3) above have effect subject to the provisions of paragraphs 13 to 19 below.

#### **Textual Amendments**

**F2** Words in Sch. A1 para. 2(4) inserted (27.7.1999) by [Finance Act 1999 \(c. 16\), s. 72\(3\)\(b\)](#)

#### *Rules for determining whether a gain is a gain on the disposal of a business asset or non-business asset*

- 3 (1) Subject to the following provisions of this Schedule, a chargeable gain accruing to any person on the disposal of any asset is a gain on the disposal of a business asset if that asset was a business asset throughout its relevant period of ownership.
- (2) Where—
- (a) a chargeable gain accrues to any person on the disposal of any asset,
  - (b) that gain does not accrue on the disposal of an asset that was a business asset throughout its relevant period of ownership, and
  - (c) that asset has been a business asset throughout one or more periods comprising part of its relevant period of ownership,
- a part of that gain shall be taken to be a gain on the disposal of a business asset and, in accordance with sub-paragraph (4) below, the remainder shall be taken to be a gain on the disposal of a non-business asset.
- (3) Subject to the following provisions of this Schedule, where sub-paragraph (2) above applies, the part of the chargeable gain accruing on the disposal of the asset that shall be taken to be a gain on the disposal of a business asset is the part of it that bears the same proportion to the whole of the gain as is borne to the whole of its relevant period of ownership by the aggregate of the periods which—
- (a) are comprised in its relevant period of ownership, and
  - (b) are periods throughout which the asset is to be taken (after applying paragraphs 8 and 9 below) to have been a business asset.
- (4) So much of any chargeable gain accruing to any person on the disposal of any asset as is not a gain on the disposal of a business asset shall be taken to be a gain on the disposal of a non-business asset.
- (5) Where, by virtue of sub-paragraphs (2) to (4) above, a gain on the disposal of a business asset accrues on the same disposal as a gain on the disposal of a non-business asset—
- (a) the two gains shall be treated for the purposes of taper relief as separate gains accruing on separate disposals of separate assets; but
  - (b) the periods after 5th April 1998 for which each of the assets shall be taken to have been held at the time of their disposal shall be the same and shall be determined without reference to the length of the periods mentioned in sub-paragraph (3)(a) and (b) above.

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*Conditions for shares to qualify as business assets*

- 4
- (1) This paragraph applies, in the case of the disposal of any asset, for determining (subject to the following provisions of this Schedule) whether the asset was a business asset at a time before its disposal when it consisted of, or of an interest in, any shares in a company (“the relevant company”).
  - (2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time the relevant company was a qualifying company by reference to that individual.
  - (3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time the relevant company was a qualifying company by reference to the trustees of that settlement.
  - (4) Where the disposal is made by an individual’s personal representatives, the asset was a business asset at that time if at that time—
    - (a) the relevant company was a trading company or the holding company of a trading group; and
    - (b) the voting rights in that company were exercisable, as to not less than 25 per cent., by the deceased’s personal representatives.
  - (5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64) and that time is not a time when the asset was a business asset by virtue of sub-paragraph (2) above, the asset shall be taken to have been a business asset at that time if at that time—
    - (a) it was held by the personal representatives of the deceased; and
    - (b) the conditions in sub-paragraph (4)(a) and (b) above were satisfied.

*Conditions for other assets to qualify as business assets*

- 5
- (1) This paragraph applies, in the case of the disposal of any asset, for determining (subject to the following provisions of this Schedule) whether the asset was a business asset at a time before its disposal when it was neither shares in a company nor an interest in shares in a company.
  - (2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—
    - (a) the purposes of a trade carried on at that time by that individual or by a partnership of which that individual was at that time a member;
    - (b) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to that individual;
    - (c) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to that individual;
    - (d) the purposes of any qualifying office or employment to which that individual was at that time required to devote substantially the whole of his time;
    - (e) the purposes of any office or employment that does not fall within paragraph (d) above but was an office or employment with a trading company in relation to which that individual falls to be treated as having, at that time, been a full-time working officer or employee.

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- (3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—
- (a) the purposes of a trade carried on by the trustees of the settlement;
  - (b) the purposes of a trade carried on at that time by an eligible beneficiary or by a partnership of which an eligible beneficiary was at that time a member;
  - (c) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to the trustees of the settlement or an eligible beneficiary;
  - (d) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the trustees of the settlement or an eligible beneficiary;
  - (e) the purposes of any qualifying office or employment to which an eligible beneficiary was at that time required to devote substantially the whole of his time;
  - (f) the purposes of any office or employment that does not fall within paragraph (e) above but was an office or employment with a trading company in relation to which an eligible beneficiary falls to be treated as having, at that time, been a full-time working officer or employee.
- (4) Where the disposal is made by an individual's personal representatives, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—
- (a) the purposes of a trade carried on by the deceased's personal representatives;
  - (b) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to the deceased's personal representatives;
  - (c) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the deceased's personal representatives.
- (5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64) and that time is not a time when the asset was a business asset by virtue of sub-paragraph (2) above, the asset shall be taken to have been a business asset at that time if at that time it was—
- (a) being held by the personal representatives of the deceased, and
  - (b) being used, wholly or partly, for purposes falling within one or more of paragraphs (a) to (c) of sub-paragraph (4) above.

*Companies which are qualifying companies*

- 6 (1) The times when a company shall be taken to have been a qualifying company by reference to an individual, the trustees of a settlement or an individual's personal representatives are—
- (a) in the case of an individual, those set out in sub-paragraphs (2) and (3) below; and
  - (b) in the case of the trustees of a settlement, those set out in sub-paragraphs (2) and (4) below; and
  - (c) in the case of personal representatives, those set out in sub-paragraph (2) below.

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- (2) A company was a qualifying company by reference to an individual, the trustees of a settlement or personal representatives at any time when both the following conditions were satisfied, that is to say—
- (a) the company was a trading company or the holding company of a trading group; and
  - (b) the voting rights in that company were exercisable, as to not less than 25 per cent., by that individual or, as the case may be, the trustees of the settlement or the personal representatives.
- (3) A company was also a qualifying company by reference to an individual at any time when all of the following conditions were satisfied, that is to say—
- (a) the company was a trading company or the holding company of a trading group;
  - (b) the voting rights in that company were exercisable, as to not less than 5 per cent., by that individual; and
  - (c) that individual was a full-time working officer or employee of that company or of a company which at the time had a relevant connection with that company.
- (4) A company was also a qualifying company by reference to the trustees of a settlement at any time when all the following conditions were satisfied, that is to say—
- (a) the company was a trading company or the holding company of a trading group;
  - (b) the voting rights in that company were exercisable, as to not less than 5 per cent., by the trustees of that settlement; and
  - (c) an eligible beneficiary was a full-time working officer or employee of that company or of a company which at the time had a relevant connection with that company.

*Persons who are eligible beneficiaries*

- 7 (1) An eligible beneficiary, in relation to an asset comprised in a settlement and a time, is any individual having at that time a relevant interest in possession under the settlement in either—
- (a) the whole of the settled property; or
  - (b) a part of the settled property that is or includes that asset.
- (2) In this paragraph “relevant interest in possession”, in relation to property comprised in a settlement, means any interest in possession under that settlement other than—
- (a) a right under that settlement to receive an annuity; or
  - (b) a fixed-term entitlement.
- (3) In sub-paragraph (2) above “fixed-term entitlement”, in relation to property comprised in a settlement, means any interest under that settlement which is limited to a term that is fixed and is not a term at the end of which the person with that interest will become entitled to the property.

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*Cases where there are non-qualifying beneficiaries*

- 8 (1) This paragraph applies in the case of a disposal of an asset by the trustees of a settlement where the asset's relevant period of ownership is or includes a period ("a sharing period") throughout which—
- (a) the asset was a business asset by reference to one or more eligible beneficiaries;
  - (b) the asset would not otherwise have been a business asset; and
  - (c) there is a non-qualifying part of the relevant income, or there would be if there were any relevant income for that period.
- (2) The period throughout which the asset disposed of is to be taken to have been a business asset shall be determined as if the relevant fraction of every sharing period were a period throughout which the asset was not a business asset.
- (3) In sub-paragraph (2) above "the relevant fraction", in relation to any sharing period, means the fraction which represents the proportion of relevant income for that period which is, or (if there were such income) would be, a non-qualifying part of that income.
- (4) Where a sharing period is a period in which the proportion mentioned in sub-paragraph (3) above has been different at different times, this paragraph shall require a separate relevant fraction to be determined for, and applied to, each part of that period for which there is a different proportion.
- (5) For the purposes of this paragraph the non-qualifying part of any relevant income for any period is so much of that income for that period as is or, as the case may be, would be—
- (a) income to which no eligible beneficiary has any entitlement; or
  - (b) income to which a non-qualifying eligible beneficiary has an entitlement.
- (6) In sub-paragraph (5) above "non-qualifying eligible beneficiary", in relation to a period, means an eligible beneficiary who is not a beneficiary by reference to whom (if he were the only beneficiary) the asset disposed of would be a business asset throughout that period.
- (7) In this paragraph "relevant income" means income from the part of the settled property comprising the asset disposed of.

*Cases where an asset is used at the same time for different purposes*

- 9 (1) This paragraph applies in the case of a disposal by any person of an asset where the asset's relevant period of ownership is or includes a period ("a mixed-use period") throughout which the asset—
- (a) was a business asset by reference to its use for purposes mentioned in paragraph 5(2) to (5) above; but
  - (b) was, at the same time, being put to a non-qualifying use.
- (2) The period throughout which the asset disposed of is to be taken to have been a business asset shall be determined as if the relevant fraction of every mixed-use period were a period throughout which the asset was not a business asset.
- (3) In sub-paragraph (2) above "the relevant fraction", in relation to any mixed-use period, means the fraction which represents the proportion of the use of the asset during that period that was a non-qualifying use.

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- (4) Where both this paragraph and paragraph 8 above apply in relation to the whole or any part of a period—
- (a) effect shall be given to that paragraph first; and
  - (b) further reductions by virtue of this paragraph in the period for which the asset disposed of is taken to have been a business asset shall be made in respect of only the relevant part of any non-qualifying use.
- (5) In sub-paragraph (4) above the reference to the relevant part of any non-qualifying use is a reference to the proportion of that use which is not a use to which a non-qualifying part of any relevant income is attributable.
- (6) Where a mixed-use period is a period in which—
- (a) the proportion mentioned in sub-paragraph (3) above has been different at different times, or
  - (b) different attributions have to be made for the purposes of sub-paragraphs (4) and (5) above for different parts of the period,
- this paragraph shall require a separate relevant fraction to be determined for, and applied to, each part of the period for which there is a different proportion or attribution.
- (7) In this paragraph—
- “non-qualifying use”, in relation to an asset, means any use of the asset for purposes which are not purposes in respect of which the asset would fall to be treated as a business asset at the time of its use; and
- “non-qualifying part” and “relevant income” have the same meanings as in paragraph 8 above.

*Periods of limited exposure to fluctuations in value not to count*

- 10 (1) Where, in the case of any asset disposed of (“the relevant asset”), the period after 5th April 1998 for which that asset had been held at the time of its disposal is or includes a period during which—
- (a) the person making the disposal, or
  - (b) a relevant predecessor of his,
- had limited exposure to fluctuations in the value of the asset, the period during which that person or predecessor had that limited exposure shall not count for the purposes of taper relief.
- (2) The times when a person shall be taken for the purposes of this paragraph to have had such limited exposure in the case of the relevant asset shall be all the times while he held that asset when a transaction entered into at any time by him, or by a relevant predecessor of his, had the effect that he—
- (a) was not exposed, or not exposed to any substantial extent, to the risk of loss from fluctuations in the value of the relevant asset; and
  - (b) was not able to enjoy, or to enjoy to any substantial extent, any opportunities to benefit from such fluctuations.
- (3) The transactions referred to in sub-paragraph (2) above do not include—
- (a) any insurance policy which the person in question might reasonably have been expected to enter into and which is insurance against the loss of the relevant asset or against damage to it, or against both; or

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- (b) any transaction having effect in relation to fluctuations in the value of the relevant asset so far only as they are fluctuations resulting from fluctuations in the value of foreign currencies.
- (4) In this paragraph “relevant predecessor”—
  - (a) in relation to a person disposing of an asset, means any person other than the person disposing of it who held that asset at a time falling in the period which is taken to be the whole period for which it had been held at the time of its disposal; and
  - (b) in relation to a relevant predecessor of a person disposing of an asset, means any other relevant predecessor of that person.
- (5) In sub-paragraph (4) above, the reference, in relation to an asset, to the whole period for which it had been held at the time of its disposal is a reference to the period that would be given for that asset by paragraph 2(1) above if, in paragraph (a), the words “whichever is the later of 6th April 1998 and” were omitted.

*Periods of share ownership not to count where there is a change of activity by the company*

- 11 (1) This paragraph applies where—
- (a) there is a disposal of an asset consisting of shares in a close company; and
  - (b) the period beginning with the relevant time and ending with the time of the disposal includes at least one relevant change of activity involving that company.
- (2) So much of the period after 5th April 1998 for which the asset had been held at the time of its disposal as falls before the time, or latest time, in that period when there was a relevant change of activity involving the close company shall not count for the purposes of taper relief.
- (3) Where—
- (a) a close company or any of its 51 per cent. subsidiaries has at any time begun to carry on a trade, and
  - (b) immediately before that time, neither that company nor any of its 51 per cent. subsidiaries was carrying on a trade,
- a relevant change of activity involving the close company shall be taken to have occurred at that time.
- (4) For the purposes of this paragraph where—
- (a) at the time of the disposal of the shares, the close company was carrying on a business of holding investments, and
  - (b) there has been any occasion falling within—
    - (i) the period of twelve months ending with that time, or
    - (ii) the period of twelve months ending with any earlier time after the relevant time,
 when the close company was not carrying on that business or when the size of that business was small by comparison with its size at the end of that period, a relevant change of activity involving the close company shall be taken to have occurred immediately after the latest such occasion before the time of the disposal.
- (5) For the purposes of sub-paragraph (4) above the size of any business at any time shall be determined by assuming it to correspond to the aggregate of the amounts and



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values given by way of consideration for the assets held at that time for the purposes of the business.

- (6) In determining for the purposes of this paragraph whether a close company is at any time carrying on a business of holding investments, and in determining for those purposes the size at any time of such a business—
- (a) all the activities of a close company and of all its 51 per cent. subsidiaries shall be taken together as if they were all being carried on by the close company; and
  - (b) the activities that are included in a business of holding investments shall be taken not to include—
    - (i) holding shares in a 51 per cent. subsidiary of the company holding the shares;
    - (ii) making loans to an associated company or to a participator in the company making the loan or in an associated company; or
    - (iii) placing money on deposit.
- (7) In this paragraph—
- (a) references to a company's carrying on a trade, or to beginning to carry one on, do not include references to its carrying on or beginning to carry on a trade that is merely incidental to any non-trading activities carried on by that company or another company in the same group of companies; and
  - (b) references to a business of holding investments include references to a business of making investments.
- (8) For the purposes of this paragraph a company is to be treated as another's associated company at any time if at that time, or at another time within one year previously—
- (a) one of them has had control of the other; or
  - (b) both have been under the control of the same person or persons.
- (9) In this paragraph—
- “51 per cent. subsidiary”, in relation to another company, means a company which, in accordance with section 170(7), is an effective 51 per cent. subsidiary of the other company for the purposes of sections 170 to 181; and
  - “participator”, in relation to a company, has the meaning given by section 417(1) of the Taxes Act.
- (10) In this paragraph “the relevant time”, in relation to the disposal of an asset consisting of shares in a company, means the beginning of the period after 5th April 1998 for which that asset had been held at the time of its disposal.

*Periods of share ownership not to count in a case of value shifting*

- 12 (1) This paragraph applies (subject to sub-paragraph (4) below) where—
- (a) there is a disposal of an asset consisting of shares in a close company, and
  - (b) at least one relevant shift of value involving that asset has occurred between the relevant time and the time of the disposal.
- (2) So much of the period after 5th April 1998 for which the asset had been held at the time of its disposal as falls before the time, or latest time, in that period at which there was a relevant shift of value involving that asset shall not count for the purposes of taper relief.

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- (3) For the purposes of this paragraph a relevant shift of value involving any asset shall be taken to have occurred whenever—
- (a) a person having control of a close company exercised his control of that company so that value passed into that asset out of a relevant holding; or
  - (b) effect was given to any other transaction by virtue of which value passed into that asset out of a relevant holding.
- (4) A relevant shift of value involving an asset shall be disregarded for the purposes of this paragraph if—
- (a) that shift of value is one in which the value passing into that asset out of the relevant holding is insignificant; or
  - (b) that shift of value took place at a time when the qualifying holding period of the relevant holding was at least as long as the qualifying holding period of that asset.
- (5) In sub-paragraphs (3) and (4) above the references to a relevant holding shall be construed, in relation to any case in which value has passed out of one asset into another asset consisting of shares in a company, as a reference to any holding by—
- (a) the person who, following the exercise of control or other transaction by virtue of which the value has passed, held the other asset, or
  - (b) a person connected with him,
- of any shares in that company or in a company under the control of the same person or persons as that company.
- (6) For the purposes of sub-paragraph (4)(b) above the reference to the qualifying holding period of a holding or other asset at the time when a shift of value takes place shall be taken to be what, in relation to a disposal at that time of that holding or other asset by the person then entitled to dispose of it, would be taken to have been its qualifying holding period for the purposes of section 2A.
- (7) In this paragraph references to shares in a company include references to rights over a company.
- (8) In this paragraph “the relevant time”, in relation to the disposal of an asset consisting of shares in a company, means the beginning of the period after 5th April 1998 for which that asset had been held at the time of its disposal.

#### *Rules for options*

- 13 (1) This paragraph applies where by virtue of section 144—
- (a) the grant of an option and the transaction entered into by the grantor in fulfilment of his obligations under the option, or
  - (b) the acquisition of an option and the transaction entered into by the person exercising the option,
- fall to be treated as one transaction.
- (2) The time of the disposal of any asset disposed of in pursuance of the transaction shall be the time of the following disposal—
- (a) if the option binds the grantor to sell, the disposal made in fulfilment of the grantor’s obligations under the option;
  - (b) if the option binds the grantor to buy, the disposal made to the grantor in consequence of the exercise of the option.

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- (3) The time of the acquisition of any asset acquired in pursuance of the option, or in consequence of its exercise, shall be the time of the exercise of the option.
- (4) Any question whether the asset disposed of or acquired was a business asset at any time shall be determined by reference to the asset to which the option related, and not the option.

*Further rules for assets derived from other assets*

- 14 (1) This paragraph applies if, in a case where—
- (a) assets have merged,
  - (b) an asset has divided or otherwise changed its nature, or
  - (c) different rights or interests in or over any asset have been created or extinguished at different times,
- the value of any asset disposed of is derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from one or more other assets acquired into the same ownership at a time before the acquisition of the asset disposed of.
- (2) The asset disposed of shall be deemed for the purposes of this Schedule to have been acquired at the earliest time at which any asset from which its value is derived was acquired into the same ownership.
  - (3) Any determination of whether the asset disposed of was a business asset at a time when another asset from which its value is derived was in the ownership of the person making the disposal shall be made as if that other asset were the asset disposed of or, as the case may be, were comprised in it.

*Special rules for assets transferred between spouses*

- 15 (1) This paragraph applies where a person (“the transferring spouse”) has disposed of any asset to another (“the transferee spouse”) by a disposal falling within section 58(1).
- (2) Paragraph 2 above shall have effect in relation to any subsequent disposal of the asset as if the time when the transferee spouse acquired the asset were the time when the transferring spouse acquired it.
- (3) Where for the purposes of paragraph 2 above the transferring spouse would be treated—
- (a) in a case where there has been one or more previous disposals falling within section 58(1), by virtue of sub-paragraph (2) above, or by virtue of that sub-paragraph together with any other provision of this Schedule, or
  - (b) in a case where there has not been such a previous disposal, by virtue of such another provision,
- as having acquired the asset at a time other than the time when the transferring spouse did acquire it, the reference in that sub-paragraph to the time when the transferring spouse acquired it shall be read as a reference to the time when for the purposes of that paragraph the transferring spouse is treated as having acquired it.
- (4) Where there is a disposal by the transferee spouse, any question whether the asset was a business asset at a time before that disposal shall be determined as if—

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- (a) in relation to times when the asset was held by the transferring spouse, references in paragraph 5(2) above to the individual by whom the disposal is made included references to the transferring spouse; and
  - (b) the reference in paragraph 5(5) above to the acquisition of the asset as a legatee by the individual by whom the disposal is made included a reference to its acquisition as a legatee by the transferring spouse.
- (5) Where, in the case of any asset, there has been more than one transfer falling within section 58(1) during the period after 5th April 1998 for which the transferee spouse has held it at the time of that spouse's disposal of that asset, sub-paragraph (4) above shall have effect as if a reference, in relation to any time, to the transferring spouse were a reference to the individual who was the transferring spouse in relation to the next disposal falling within section 58(1) to have been made after that time.

*Special rules for postponed gains*

- 16 (1) Sub-paragraph (3) below applies where the whole or any part of any gain which—
- (a) would (but for any provision of this Act) have accrued on the disposal of any asset, or
  - (b) would have accrued on any disposal assumed under any enactment to have been made at any time,

falls by virtue of an enactment mentioned in sub-paragraph (2) below to be treated as accruing on or after 6th April 1998 at a time (whether or not the time of a subsequent disposal) which falls after the time of the actual or assumed disposal mentioned in paragraph (a) or (b) above ("the charged disposal").

- (2) Those enactments are—
- (a) section 10A,
  - (b) section 116(10),
  - (c) section 134,
  - (d) section 154(2) or (4),
  - (e) Schedule 5B or 5C, or
  - (f) paragraph 27 of Schedule 15 to the Finance Act 1996 (qualifying indexed securities).

- (3) In relation to the gain or part of a gain that is treated as accruing after the time of the charged disposal—
- (a) references in this Schedule (except this sub-paragraph) to the disposal on which the gain or part accrues are references to the charged disposal; and
  - (b) references in this Schedule to the asset disposed of by that disposal are references to the asset that was or would have been disposed of by the charged disposal;

and, accordingly, the end of the period after 5th April 1998 for which that asset had been held at the time of the disposal on which that gain or part accrues shall be deemed to have been the time of the charged disposal.

- (4) In relation to any gain that is treated by virtue of—
- (a) subsection (1) of section 12, or
  - (b) subsection (2) of section 279,
- as accruing after the time of the disposal from which it accrues, references in this Schedule to the disposal on which the gain accrues, to the asset disposed of on

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that disposal and to the time of that disposal shall be construed disregarding that subsection.

- (5) It shall be immaterial for the purposes of this paragraph—
- (a) that the time of the charged disposal or, as the case may be, the time of the actual disposal from which the gain accrues was before 6th April 1998; and
  - (b) that the time at which the charged disposal is treated as accruing is postponed on more than one occasion under an enactment specified in subparagraph (2) above.

*Special rule for property settled by a company*

- 17 (1) No part of any chargeable gain accruing to the trustees of a settlement on the disposal of any asset shall be treated as a gain on the disposal of a business asset if—
- (a) the settlor is a company, and
  - (b) that company has an interest in the settlement at the time of the disposal.
- (2) Subject to the following provisions of this paragraph, a company which is a settlor in relation to any settlement shall be regarded as having an interest in a settlement if—
- (a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of that company or an associated company; or
  - (b) that company or an associated company enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.
- (3) This paragraph does not apply unless the settlor or an associated company is within the charge to corporation tax in respect of chargeable gains for the accounting period in which the chargeable gain accrues.
- (4) In this paragraph “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.
- (5) For the purposes of this paragraph a company is to be treated as another’s associated company at any time if at that time, or at another time within one year previously—
- (a) one of them has had control of the other; or
  - (b) both have been under the control of the same person or persons.
- (6) In this paragraph “settlor” has the meaning given by section 660G(1) and (2) of the Taxes Act.
- (7) This paragraph has effect subject to paragraph 20 below.

*Special rules for assets acquired in the reconstruction of mutual businesses etc.*

- 18 (1) Where—
- (a) shares in a company have been issued under any arrangements for the issue of shares in that company in respect of the interests of the members of a mutual company; and
  - (b) a person to whom shares were issued under those arrangements falls by virtue of subsection (3) of section 136 to be treated as having exchanged

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interests of his as a member of the mutual company for shares issued under those arrangements,

paragraph 2 above shall have effect (notwithstanding that section) as if the time of that person's acquisition of the shares were the time when they were issued to him.

(2) Where—

- (a) a registered friendly society has been incorporated under the Friendly Societies Act 1992, and
- (b) there has been a change under Schedule 4 to that Act as a result of which a member of the registered society, or of a branch of the registered society, has become a member of the incorporated society or of a branch of the incorporated society,

paragraph 2 above shall have effect (notwithstanding anything in section 217B) in relation to the interests and rights in the incorporated society, or the branch of the incorporated society, which that person had immediately after the change, as if the time of their acquisition by him were the time of the change.

(3) In this paragraph—

“the incorporated society”, in relation to the incorporation of a registered friendly society, means the society after incorporation;

“insurance company” has the meaning given by section 96(1) of the Insurance Companies Act 1982;

“mutual company” means—

- (a) a mutual insurance company; or
- (b) a company of another description carrying on a business on a mutual basis;

“mutual insurance company” means any insurance company carrying on a business without having a share capital;

“the registered society”, in relation to the incorporation of a registered friendly society, means the society before incorporation.

#### *Special rule for ancillary trust funds*

- 19 (1) Use of an asset as part of an ancillary trust fund of a member of Lloyd's—
- (a) shall not be regarded as a use in respect of which the asset is to be treated as a business asset at any time; but
  - (b) shall be disregarded in any determination for the purposes of paragraph 9 above of whether it was being put to a non-qualifying use at the same time as it was being used for purposes mentioned in paragraph 5(2) to (5) above.
- (2) In this section “ancillary trust fund” has the same meaning as in Chapter III of Part II of the Finance Act 1993.

#### *General rules for settlements*

- 20 (1) Where, in the case of any settlement, the settled property originates from more than one settlor, this Schedule shall have effect as if there were a separate and distinct settlement for the property originating from each settlor, and references in this Schedule to an eligible beneficiary shall be construed accordingly.
- (2) Subsections (1) to (5) of section 79 apply for the purposes of this paragraph as they apply for the purposes of that section.

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### *General rule for apportionments under this Schedule*

- 21 Where any apportionment falls to be made for the purposes of this Schedule it shall be made—
- (a) on a just and reasonable basis; and
  - (b) on the assumption that an amount falling to be apportioned by reference to any period arose or accrued at the same rate throughout the period over which it falls to be treated as having arisen or accrued.

### *Interpretation of Schedule*

- 22 (1) In this Schedule—
- “51 per cent. subsidiary” (except in paragraph 11 above) has the meaning given by section 838 of the Taxes Act;
- “commercial association of companies” means a company together with such of its associated companies (within the meaning of section 416 of the Taxes Act) as carry on businesses which are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking;
- “eligible beneficiary” shall be construed in accordance with paragraphs 7 and 20 above;
- “full-time working officer or employee”, in relation to any company, means an individual who—
- (a) is an officer or employee of that company or of that company and one or more other companies with which that company has a relevant connection; and
  - (b) is required in that capacity to devote substantially the whole of his time to the service of that company, or to the service of those companies taken together;
- “group of companies” means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries;
- “holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares in one or more companies which are its 51 per cent. subsidiaries;
- “office” and “employment” have the same meanings as in the Income Tax Acts;
- “qualifying office or employment”, in relation to any time, means an office or employment with a person who was at that time carrying on a trade;
- “qualifying company” shall be construed in accordance with paragraph 6 above;
- “relevant period of ownership” shall be construed in accordance with paragraph 2 above;
- “shares”, in relation to a company, includes any securities of that company;
- “trade” means (subject to section 241(3)) anything which—
- (a) is a trade, profession or vocation, within the meaning of the Income Tax Acts; and
  - (b) is conducted on a commercial basis and with a view to the realisation of profits;
- “trading company” means a company which is either—
- (a) a company existing wholly for the purpose of carrying on one or more trades; or

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(b) a company that would fall within paragraph (a) above apart from any purposes capable of having no substantial effect on the extent of the company's activities;

“trading group” means a group of companies the activities of which (if all the activities of the companies in the group are taken together) do not, or not to any substantial extent, include activities carried on otherwise than in the course of, or for the purposes of, a trade; and

“transaction” includes any agreement, arrangement or understanding, whether or not legally enforceable, and a series of transactions.

- (2) For the purposes of this Schedule one company has a relevant connection with another company at any time when they are both members of the same group of companies or of the same commercial association of companies.
- (3) References in this Schedule to the acquisition of an asset that was provided, rather than acquired, by the person disposing of it are references to its provision.
- (4) References in this Schedule, in relation to a part disposal, to the asset disposed of are references to the asset of which there is a part disposal.]



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