

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, SCHEDULE 17. (See end of Document for details)

SCHEDULES

SCHEDULE 17

Section 77.

NORTHERN IRELAND ELECTRICITY

Interpretation

- 1 (1) In this Schedule—
- “the final accounting period” means the last complete accounting period of NIE ending before the transfer date;
 - “NIE” means Northern Ireland Electricity;
 - “the Order” means the ^{M1}Electricity (Northern Ireland) Order 1992;
 - “successor company” means a company nominated under Article 69(2) of the Order for the purposes of Article 69(1) of the Order;
 - “transfer date” means the day appointed under Article 69(3) of the Order for the purposes of Article 69(4) of the Order;
 - “transfer scheme” means a scheme under Article 69(1) of the Order.
- (2) This Schedule, so far as it relates to corporation tax on chargeable gains, shall be construed as one with the ^{M2}Capital Gains Tax Act 1979 or, where appropriate, the ^{M3}Taxation of Chargeable Gains Act 1992.
- (3) For the purposes of this Schedule a transfer or agreement shall be regarded as made in pursuance of Schedule 10 to the Order if the making of that transfer or agreement is required or authorised by or under paragraph 3 or 5 of that Schedule (allocation of assets and liabilities and variation of transfers by agreement).

Marginal Citations

- M1** S.I. 1992/231 (N.I. 1)
M2 1979 c. 14.
M3 1992 c. 12.

Transfer to successor companies: general

- 2 (1) Subject to sub-paragraph (2) below, the following provisions shall apply for the purposes of the Corporation Tax Acts, namely-
- (a) any part of the trade carried on by NIE which is transferred by the Order to a successor company shall be treated as having been, at the time when it began to be carried on by NIE or any predecessor and at all times since that time, a separate trade carried on by the successor company;
 - (b) the trade carried on by a successor company 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 on before that date;

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- (c) all property, rights and liabilities of NIE which are transferred by the Order to a successor company shall be treated as having been, at the time when they became vested in NIE or any predecessor and at all times since that time, property, rights and liabilities of the successor company; and
 - (d) anything done by NIE or any predecessor in relation to any property, rights and liabilities which are transferred by the Order to a successor company shall be deemed to have been done by the successor company.
- (2) 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 transfer scheme.
- (3) In sub-paragraph (2) above “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)(a), (c) or (d) of the Taxes Act 1988.
- (4) This paragraph shall have effect in relation to accounting periods beginning after the final accounting period.

Roll-over relief

- 3 Where NIE has before the transfer date disposed of (or of its interest in) any assets used, throughout the period of ownership, wholly or partly for the purposes of the part of its trade transferred by the Order to a successor company, sections 115 to 119 of the ^{M4}Capital Gains Tax Act 1979 or, where appropriate, sections 152 to 156 of the ^{M5}Taxation of Chargeable Gains Act 1992 (roll-over relief on replacement of business assets) shall have effect in relation to that disposal as if NIE and the successor company were the same person.

Marginal Citations

M4 1979 c. 14.

M5 1992 c. 12.

Unallowed capital losses

- 4 (1) Any unallowed capital losses of NIE shall be apportioned between the successor companies in accordance with the transfer scheme; and any such losses which are so apportioned to a successor company shall be treated as allowable capital losses accruing to the successor company on the disposal of an asset on the transfer date.
- (2) In sub-paragraph (1) above—
- “allowable capital losses” means losses which are allowable losses for the purposes of corporation tax on chargeable gains;
- “unallowed capital losses” means any allowable capital losses which have accrued to NIE before the transfer date, in so far as they have not been allowed as deductions from chargeable gains.

Arrangements in favour of other successor companies

- 5 (1) Sub-paragraph (3) below applies to any disposal of an asset which is effected, and sub-paragraphs (4) to (6) below apply to any lease which is granted, in pursuance of

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a provision included in the transfer scheme by virtue of Article 70(1)(c) of the Order (scheme may require successor company to enter into arrangements in favour of any other successor company).

- (2) Sub-paragraph (3) below also applies to any disposal of an asset which is effected in pursuance of an agreement under paragraph 3(2) of Schedule 10 to the Order and which is either the grant of a lease of land or the creation of other liabilities and rights over land.
- (3) A disposal to which this sub-paragraph applies shall be taken for the purposes of corporation tax on chargeable gains 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 successor company making the disposal.
- (4) Section 38(1)(a) and (4) of the Taxes Act 1988 (rules for ascertaining duration of leases) shall be disregarded in determining for the purposes of [F1]section 290 of the Capital Allowances Act 2001 (election to treat grant of lease exceeding 50 years as sale) whether a lease to which this sub-paragraph applies is a [F2]lease which satisfies the condition in subsection (1)(c) of that section; in relation to any such lease which is, on that basis, such a long lease—
 - (a) the lessee shall be deemed for the purposes of that section to have paid in consideration for the grant of the lease a capital sum of an amount equal to the residue of expenditure immediately before the lease takes effect, computed in accordance with [F3]Chapter 8 of Part 3 of that Act, and
 - (b) [F4]section 291(1) of that Act shall be disregarded;and [F5]sections 567 to 570 of that Act shall not apply in relation to the grant of a lease in respect of which, by virtue of this sub-paragraph, an election is made under [F6]section 290 of that Act.
- (5) Where the conditions in [F7]section 183(1)(a) and (b) of the Capital Allowances Act (incoming lessee where lessor entitled to allowances) are fulfilled in relation to a lease to which this sub-paragraph applies—
 - (a) the lessee shall be deemed to have given as consideration for the lease a capital sum which falls to be treated for the purposes of [F8]Part 2 of that Act as expenditure on the provision of the fixture concerned; [F9]and
 - (b) the amount of that capital sum shall be equal to the amount of expenditure which is attributed to the fixture concerned for the purposes of apportioning, in accordance with the transfer scheme, expenditure by reference to which capital allowances may be made; . . .[F10](c)
- (6) Section 38(1)(a) and (4) of the Taxes Act 1988 shall be disregarded in ascertaining for the purposes of section 35 of that Act (Schedule D charge on assignment of lease granted at an undervalue) the duration of a lease to which this sub-paragraph applies.
- (7) Subject to the repeals made by the M6Taxation of Chargeable Gains Act 1992, in section 68(7A) of the M7Finance Act 1985 (modification of indexation allowance: list of no gain/no loss provisions) there shall be added after paragraph (i) the words “and
 - (j) paragraph 5(3) of Schedule 17 to the Finance (No. 2) Act 1992.””

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- (8) Subject to the repeals made by the ^{M8}Taxation of Chargeable Gains Act 1992, in paragraph 1(3) of Schedule 8 to the Finance Act 1988 (rebasings to 1982: list of no gain/no loss provisions) there shall be added after paragraph (i) the words “and
(j) paragraph 5(3) of Schedule 17 to the Finance (No. 2) Act 1992.”

^{F11}(9)

Textual Amendments

- F1** Words in Sch. 17 para. 5(4) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(1)(a)**
- F2** Words in Sch. 17 para. 5(4) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(1)(b)**
- F3** Words in Sch. 17 para. 5(4)(a) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(1)(c)**
- F4** Words in Sch. 17 para. 5(4)(b) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(1)(d)**
- F5** Words in Sch. 17 para. 5(4) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(1)(e)**
- F6** Words in Sch. 17 para. 5(4) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(1)(f)**
- F7** Words in Sch. 17 para. 5(5) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(2)(a)**
- F8** Words in Sch. 17 para. 5(5) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(2)(b)**
- F9** Words in Sch. 17 para. 5(5) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 87(2)(c)**
- F10** Sch. 17 para. 5(4)(c) and word “and” immediately preceding it repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 580, 579(1), **Sch. 2 para. 87(2)(d)**, **Sch. 4**
- F11** Sch. 17 para. 5(9) omitted (21.7.2008) (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of **Finance Act 2008 (c. 9)**, **Sch. 2 para. 70(a)(iii)**

Marginal Citations

- M6** 1992 c. 12.
M7 1985 c. 54.
M8 1992 c. 12.

Restriction of losses by reference to capital allowances

- 6 (1) Where by virtue of sub-paragraph (4) of paragraph 5 above an election is made under [^{F12}section 290 of the Capital Allowances Act 2001] in respect of a lease to which that sub-paragraph applies, sub-paragraph (2) and, if the relevant condition is met, sub-paragraph (3) below shall apply; and for the purposes of this sub-paragraph the relevant condition is that, as a result of a disposal by the lessee in relevant circumstances, section 275(1) of the ^{M9}Income and Corporation Taxes Act 1970 or section 174(1) of the ^{M10}Taxation of Chargeable Gains Act 1992 applies in relation to a subsequent disposal.
- (2) Where this sub-paragraph applies, section 34 of the ^{M11}Capital Gains Tax Act 1979 or, as the case may be, section 41 of the Taxation of Chargeable Gains Act 1992

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(restriction of losses by reference to capital allowances etc.) shall apply in relation to any disposal by the lessee as if any capital allowance made to—

- (a) NIE or any predecessor, or
- (b) the lessor,

in respect of expenditure incurred on the construction of the building or structure comprised in the lease had been made to the lessee.

- (3) Where this sub-paragraph applies, section 275(1) of the Income and Corporation Taxes Act 1970 or, as the case may be, section 174(1) of the Taxation of Chargeable Gains Act 1992 shall apply as if the reference to capital allowances made to the person from which the asset was acquired included capital allowances made to—

- (a) NIE or any predecessor, or
- (b) the lessor,

in respect of expenditure incurred on the construction of the building or structure comprised in the lease but only so far as not taken into account in relation to any previous disposal.

- (4) Where by virtue of sub-paragraph (5) of paragraph 5 above an election is made under [^{F13}section 183 of the Capital Allowances Act 2001] in respect of a lease to which that sub-paragraph applies, sub-paragraph (5) and, if the relevant condition is met, sub-paragraph (6) below shall apply; and the relevant condition for the purposes of this sub-paragraph is the same as the relevant condition for the purposes of sub-paragraph (1) above.

- (5) Where this sub-paragraph applies, section 34 of the Capital Gains Tax Act 1979 or, as the case may be, section 41 of the Taxation of Chargeable Gains Act 1992 shall apply in relation to any disposal by the lessee as if any capital allowance made to—

- (a) NIE or any predecessor, or
- (b) the lessor,

in respect of expenditure incurred on the provision of the fixture comprised in the lease had been made to the lessee.

- (6) Where this sub-paragraph applies, section 275(1) of the Income and Corporation Taxes Act 1970 or, as the case may be, section 174(1) of the Taxation of Chargeable Gains Act 1992 shall apply as if the reference to capital allowances made to the person from which the asset was acquired included capital allowances made to—

- (a) NIE or any predecessor, or
- (b) the lessor,

in respect of expenditure incurred on the provision of the fixture comprised in the lease but only so far as not taken into account in relation to any previous disposal.

Textual Amendments

F12 Words in [Sch. 17 para. 6\(1\)](#) substituted (22.3.2001 with effect as mentioned in [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 87\(3\)](#)

F13 Words in [Sch. 17 para. 6\(4\)](#) substituted (22.3.2001 with effect as mentioned in [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 87\(4\)](#)

Marginal Citations

M9 1970 c. 10.

M10 1992 c. 12.

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M11 1979 c. 14.

Transfers between successor companies

- 7 Where any property, rights and liabilities transferred by the Order to a successor company (the first company) are, in pursuance of Schedule 10 to the Order, transferred to another successor company (the second company)-
 - (a) the preceding provisions of this Schedule shall have effect as if the transfer effected by the Order had been a transfer to the second company; and
 - (b) anything which, in relation to the property, rights and liabilities transferred in pursuance of that Schedule, was done by the first company for the purposes of its trade shall be deemed to have been done by the second company for the purposes of its trade.

Apportionments etc.

- 8 (1) This paragraph applies where any apportionment or other matter arising under the preceding provisions of this Schedule appears to be material as respects the liability to tax (for whatever period) of 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 is to be dealt with shall be determined, for the purposes of the tax of the successor companies concerned [^{F14}as if it were an appeal, and each of the successor companies shall be entitled to be a party to any proceedings] —
 - ^{F15}(a)
 - ^{F15}(b)
 - ^{F15}(c)
- ^{F16}(3)

Textual Amendments

- F14** Words in Sch. 17 para. 8(2) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 187(2)(a)**
- F15** Sch. 17 para. 8(2)(a)(b)(c) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 187(2)(b)**
- F16** Sch. 17 para. 8(3) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 187(3)**

Securities of successor companies

- 9 (1) Any share issued by a successor company in pursuance of Article 73 of the Order (initial government holding in successor companies) 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 the company of an amount equal to the nominal value of the share.
- (2) Any debenture issued by a successor company in pursuance of Article 73 of the Order 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 the company of an amount equal to the principal sum payable under the debenture; and

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- (b) wholly and exclusively for the purposes of the trade carried on by the company.
- (3) 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.

Stamp duty reserve tax

- 10 (1) No agreement made for the purposes of or for purposes connected with the 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 the Order shall give rise to a charge to stamp duty reserve tax.
- (3) This paragraph shall be deemed to have come into force on 1st April 1992.

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