Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Income tax: charge, rates and reliefs

75 Charge and rates of income tax for 1994-95.

(1) Income tax shall be charged for the year 1994-95, and for that year—

(a) the lower rate shall be 20 per cent.,

(b) the basic rate shall be 25 per cent., and

(c) the higher rate shall be 40 per cent.

(2) For the year 1994-95 section 1(2) of the Taxes Act 1988 shall apply as if—

(a) the amount specified in paragraph (aa) were £3,000 (the lower rate limit), and

(b) the amount specified in paragraph (b) were £23,700 (the basic rate limit);

and accordingly section 1(4) of that Act (indexation) shall not apply for the year 1994-95.

76 Personal allowance.

Section 257 of the Taxes Act 1988 (personal allowance) shall apply for the year 1994-95 as if the amounts specified in it were the same as the amounts specified in it as it applies for the year 1993-94, and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257 shall not apply for the year 1994-95.

77 Rate of relief to married couples etc.

(1) " The provisions of section 256 of the Taxes Act 1988 (general provision as to personal reliefs) shall become subsection (1) of that section and after that subsection there shall be inserted the following subsections— "

"(2) Where under any provision of this Chapter the relief to which a person is entitled for any year of assessment consists in an income tax reduction calculated by reference to a specified amount, the effect of that relief shall be that the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from that provision less whichever is the smaller of—

(a) the amount equal to 20 per cent. of the specified amount; and

(b) the amount which reduces his liability to nil.

(3) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from any provision providing for an income tax reduction, no account shall be taken—

(a) where that provision is section 259 or 261A, of any income tax reduction under any of the other provisions of this Chapter;

(b) where that provision is section 262(1), of any income tax reduction under any of the other provisions of this Chapter except section 259 or 261A; or

(c) whatever that provision—

(i) of 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 or by way of a credit under section 790(1); or

(ii) of 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;

but paragraph (a) above, so far as it relates to any income tax reduction under section 261A, is without prejudice to the provisions of subsection (2) of that section."

(2) In section 257A of that Act (married couple's allowance)—

F1(a) . . . . . .

(b) in subsection (2), for the words from "to a deduction" to "the deduction" there shall be substituted " for that year to an income tax reduction calculated by reference to £2,665 (instead of to the reduction "; and

(c) in subsection (3), for the words from "to a deduction" to "the deduction" there shall be substituted " for that year to an income tax reduction calculated by reference to £2,705 (instead of to the reduction ".

F2(3) . . . . . .

F2(4) . . . . . .

F3(5) . . . . . .

(6) The Taxes Act 1988 and the M1Taxes Management Act 1970 shall have effect with the amendments specified in Schedule 8 to this Act (which supplements the provisions of this section).

(7) This section and Schedule 8 to this Act shall have effect for the year 1994-95 and, subject to the following provisions of this section, for subsequent years of assessment.

(8) For the year 1995-96 and subsequent years of assessment section 256(2)(a) of the Taxes Act 1988 shall have effect with the substitution of " 15 per cent " for the words "20 per cent."

(9) For the year 1995-96, section 257A of the Taxes Act 1988 shall have effect—

(a) as if the same amount (namely £1,720) were specified in subsection (1) as is specified in that subsection as it applies for the year 1994-95;

(b) as if the amount specified in subsection (2) were "£2,995"; and

(c) as if the amount specified in subsection (3) were "£3,035".

(10) Section 257C(1) of the Taxes Act 1988 (indexation), so far as relating to section 257A (1) to (3) of that Act, shall not apply for the year 1994-95 or for the year 1995-96 but shall not be prevented by anything in this section from applying for the year 1996-97 or any subsequent year of assessment.

Textual Amendments

F1 S. 77(2)(a) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(3), Note 2 in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, Note 2

F2 S. 77(3)(4) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(4), Note in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(4)**, Note

F3 S. 77(5) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(5), Note 2 in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(5)**, Note 2

Marginal Citations

M1 1970 c. 9.

78 Amount by reference to which MCA is reduced.

Section 257A(5) of the Taxes Act 1988 (reduction of married couple's allowance if claimant's total income exceeds a certain amount) shall apply for the year 1994-95 as if the amount specified in it were the same as the amount specified in it as it applies for the year 1993-94, and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257A(5) shall not apply for the year 1994-95.

79 Relief for maintenance payments.

(1) Sections 347A and 347B of the [M2]Taxes Act 1988 [F4]. . . (which contain provision with respect to the deductions from income allowed on account of maintenance payments) shall have effect in relation to payments becoming due on or after 6th April 1994 with the following modifications.

[F5](2) . . . . . .

(3) In subsection (2) of section 347B (relief for qualifying maintenance payments)—

(a) the words "Notwithstanding section 347A(1)(a) but" shall be omitted; and

(b) for the words from "in computing" to "to deduct" there shall be substituted " for a year of assessment to an income tax reduction calculated by reference to ".

(4) In subsection (3) of section 347B (restriction of relief to amount of married couple's allowance), for the words from the beginning to "exceed" there shall be substituted " The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to ".

F5(5) . . . . . .

(6) After subsection (5) of section 347B there shall be inserted the following subsections—

"(5A) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to the amount determined in accordance with subsections (2) to (5) above ("the relevant amount"), the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

(a) the amount equal to the appropriate percentage of the relevant amount; and

(b) the amount which reduces his liability to nil;

and in this subsection "the appropriate percentage" means 20 per cent. for the year 1994-95 and 15 per cent. for the year 1995-96 and subsequent years of assessment.

(5B) In determining for the purposes of subsection (5A) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII;

(b) 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 or by way of a credit under section 790(1); or

(c) 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."

F5(7) . . . . . .

F5(8) . . . . . .

Textual Amendments

F4 Words in s. 79(1) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(6), Note in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, Note

F5 S. 79(2)(5)(7)(8) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(6), Note in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, Note

Marginal Citations

M2 1988 c. 39.

80 Limit on relief for interest.

For each of the years 1994-95 and 1995-96 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.

81 Mortgage interest relief etc.

(1) For subsection (1) of section 353 of the Taxes Act 1988 (general provision for relief for interest payments) there shall be substituted the following subsection—

"(1) Where a person pays interest in any year of assessment, that person, if he makes a claim to the relief, shall for that year of assessment be entitled (subject to sections 354 to 368) to relief in accordance with this section in respect of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of sections 354 to 365."

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

"(1A) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

(a) is eligible for that relief by virtue of section 354 or 365, and

(b) so far as eligible by virtue of section 354, is so eligible in a case which falls, or is treated as falling, within section 355(1)(a), 356 or 358,

that relief shall consist in an income tax reduction for that year calculated by reference to that amount.

(1B) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

(a) is eligible for that relief otherwise than by virtue of section 354 or 365, or

(b) is eligible for that relief by virtue of section 354 in a case falling within section 355(1)(b),

that relief shall consist (subject to sections 237(5)(b) and 355(4)) in a deduction or set-off of that amount from or against that person's income for that year.

(1C) Without prejudice to subsection (1E) below, where the whole or any part of an amount of interest is eligible for relief under this section by virtue of section 354 in a case which (apart from this subsection) would fall, or be treated as falling, within both section 355(1)(a) or 356 and section 355(1)(b), then that case shall be treated for the purposes of this section and the following provisions of this Act—

(a) except in relation to payments to which an election made for the purposes of this subsection by the person entitled to the relief applies, as falling within section 355(1)(b) and not within section 355(1)(a) or 356; and

(b) in relation to payments to which such an election does apply, as falling within section 355(1)(a) or, as the case may be, 356, and not within section 355(1)(b).

(1D) An election for the purposes of subsection (1C)—

(a) shall be made, and may be withdrawn, by the giving of written notice to an officer of the Board;

(b) shall apply to every payment of interest which—

(i) is made after the time specified in the notice of that election as the time as from which it takes effect; and

(ii) is not made after a time specified in a notice of the withdrawal of that election as the time as from which that election is withdrawn;

(c) shall not be made so as to take effect as from any time except the beginning of a year of assessment or a time as from which the conditions for the case to fall, or be treated as falling, within both section 355(1)(a) or 356 and section 355(1)(b) have begun to be satisfied in relation to payments of interest on the loan in question;

(d) shall not be withdrawn except as from the beginning of a year of assessment; and

(e) shall not be made so as to take effect, and shall not be withdrawn, as from any time before the beginning of the year of assessment immediately before that in which the notice of the election or, as the case may be, of the withdrawal is given to an officer of the Board.

(1E) Where any person is entitled for any year of assessment to relief under this section in respect of any amount of interest as is eligible for that relief partly as mentioned in subsection (1A) above and partly as mentioned in subsection (1B) above, that amount of interest shall be apportioned between the cases to which each of those subsections applies without regard to what parts of the total amount borrowed remain outstanding but according to the following factors, that is to say—

(a) the proportions of the total amount borrowed which were applied for different purposes; and

(b) in the case of so much of any amount of interest which is, or in pursuance of an apportionment under paragraph (a) above is treated as, eligible for relief by virtue of section 354, the different uses to which the land or other property in question is put from time to time;

and subsection (1A) or (1B) above shall apply accordingly in relation to the interest apportioned to the case to which that subsection applies.

(1F) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to an amount of interest, the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

(a) the amount equal to the applicable percentage of that amount of interest; and

(b) the amount which reduces his liability to nil.

(1G) In subsection (1F) above "the applicable percentage"—

(a) in relation to so much of any interest as is eligible for relief under this section by virtue of section 354, means 20 per cent.; and

(b) in relation to so much of any interest as is eligible for relief under this section by virtue of section 365, means the percentage which is the basic rate for the year of assessment in question;

but, in relation to any payment of interest which (whenever falling due) is made in the year 1995-96 or any subsequent year of assessment, paragraph (a) above shall have effect with the substitution of "15 per cent." for "20 per cent."

(1H) In determining for the purposes of subsection (1F) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII or section 347B;

(b) 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 or by way of a credit under section 790(1); or

(c) 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."

F6(3) . . . . . .

(4) For subsections (3) to (5B) of section 369 of that Act (provisions balancing deduction of relevant loan interest from income against charge to tax) there shall be substituted the following subsection—

"(3) The following payments, that is to say—

(a) payments of relevant loan interest to which this section applies, and

(b) payments which would be such payments but for section 373(5),

shall not be allowable as deductions for any purpose of the Income Tax Acts except in so far as they fall to be treated as such payments by virtue only of section 375(2) and would be allowable apart from this subsection."

(5) Schedule 9 to this Act (which for the purposes of or in connection with the provisions of this section makes further modifications of certain enactments in relation to tax relief on interest payments) shall have effect.

(6) The preceding provisions of this section and that Schedule—

(a) shall have effect in relation to payments of interest made on or after 6th April 1994 (whenever falling due); and

(b) shall also have effect, so far as they relate to relevant loan interest, in relation to any payments of interest becoming due on or after 6th April 1994 which have been made at any time before that date but on or after 30th November 1993.

(7) Any provision made before the passing of this Act by reference to the basic rate of income tax and contained in any instrument or agreement under or in accordance with which payments of relevant loan interest have been or are to be made shall be taken, in relation to any such payment as is mentioned in subsection (6)(a) or (b) above, to have been made, instead, by reference to a rate which, in the case of that payment, is the applicable percentage for the purposes of subsection (1) of section 369 of the Taxes Act 1988.

F6(8) . . . . . .

(9) In this section "relevant loan interest" has the same meaning as in Part IX of the Taxes Act 1988.

Textual Amendments

F6 S. 81(3)(8) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(7), Note 4 in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(7)**, Note 4

82 Relief for blind persons.

(1) In section 265(1) of the Taxes Act 1988 (blind person's allowance) for "£1,080" there shall be substituted " £1,200 ".

(2) This section shall apply for the year 1994-95 and subsequent years of assessment.

F7 83 . . . . . .

Textual Amendments

F7 S. 83 repealed (31.7.1997 with effect as mentioned in Sch. 8 Pt. II(2), Note in the repealing Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(2)**, Note

F8 84 . . . . . .

Textual Amendments

F8 S. 84 repealed (27.7.1999 with effect as mentioned in s. 59(3)(b), Sch. 20 Pt. III(15), Note in the repealing Act) by 1999 c. 16, ss. 59(3)(b), 139, **Sch. 20 Pt. III(15)**, Note; S.I. 2000/2004, **art. 2**

Corporation tax charge and rate

85 Charge and rate of corporation tax for 1994.

Corporation tax shall be charged for the financial year 1994 at the rate of 33 per cent.

86 Small companies.

(1) For the financial year 1994—

(a) the small companies' rate shall be 25 per cent., and

(b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fiftieth.

(2) In section 13(3) of that Act (limits of marginal relief) in paragraphs (a) and (b)—

(a) for "£250,000" there shall be substituted " £300,000 ", and

(b) for "£1,250,000" there shall be substituted " £1,500,000 ".

(3) Subsection (2) above shall have effect for the financial year 1994 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.

Benefits in kind

87 Car fuel.

(1) In section 158 of the Taxes Act 1988 (car fuel) for the Tables in subsection (2) (tables of cash equivalents) there shall be substituted—

" **TABLE A**

Cylinder capacity of car in cubic centimetres	***Cash equivalent***
1,400 or less	£640
More than 1,400 but not more than 2,000	£810
More than 2,000	£1,200

TABLE AB

Cylinder capacity of car in cubic centimetres	***Cash equivalent***
2,000 or less	£580
More than 2,000	£750

TABLE B

Description of car	***Cash equivalent***
Any car	£1,200"

(2) This section shall have effect for the year 1994-95 and subsequent years of assessment.

88 Beneficial loan arrangements.

(1) In section 160(1) of the Taxes Act 1988 (charge to tax of benefit of loan obtained by reason of employment) for the words following paragraph (b) there shall be substituted—

"an amount equal to whatever is the cash equivalent of the benefit of the loan for that year shall, subject to the provisions of this Chapter, be treated as emoluments of the employment, and accordingly chargeable to tax under Schedule E; and where that amount is so treated, the employee is to be treated as having paid interest on the loan in that year of the same amount.

(1A) Interest treated as paid by virtue of subsection (1) above—

(a) shall be treated as paid for all the purposes of the Tax Acts (other than this Chapter, including Schedule 7), but shall not be treated for any purpose as income of the person making the loan or be treated as relevant loan interest to which section 369 applies, and

(b) shall be treated as accruing during, and paid by the employee at the end of, the year or, if different, the period in the year during which he is employed in employment to which this Chapter applies and the loan is outstanding.

(1B) All the loans between the same lender and borrower which—

(a) are outstanding at any time, as to any amount, in any year,

(b) are not qualifying loans, and

(c) are made in the same currency,

are, if a cash equivalent for them falls to be ascertained, to be treated for the purposes of subsections (1) and (1A) above and Part II of Schedule 7 as a single loan.

(1C) In this section and section 161 "qualifying loan" means any loan made to any person where, assuming interest is being paid on the loan (whether or not it is in fact being paid), the whole or any part of the interest—

(a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section or section 357(1)(b), or

(b) is deductible in computing the amount of the profits or gains to be charged under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him."

(2) At the end of section 160(5) of that Act (interpretation, including "official rate of interest") there shall be added—

"and, without prejudice to the generality of section 178 of the Finance Act 1989, regulations under that section may make different provision in relation to a loan outstanding for the whole or part of a year if—

(i) it was made in the currency of a country or territory outside the United Kingdom,

(ii) the benefit of the loan is obtained by reason of the employment of a person who normally lives in that country or territory, and

(iii) that person has lived in that country or territory at some time in the period of six years ending with that year".

(3) For section 161(1) of that Act (exemption for loans the cash equivalent of which does not exceed £300) there shall be substituted—

"(1) The cash equivalent of the benefit of any such loan as is referred to in section 160(1) is not to be treated as emoluments of the employment if—

(a) at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000, or

(b) where paragraph (a) above does not apply, the loan is not a qualifying loan and at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) and are not qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000.

(1A) Section 160(1) does not in any year apply to a loan made at any time in that or an earlier year by a person in the ordinary course of a business carried on by him which includes the lending of money if—

(a) comparable loans were available, at the time the loan in question was made, to all those who might be expected to avail themselves of the services which he provides in the course of that business,

(b) of the total number of the loan in question and comparable loans made by him at or about the time the loan in question was made, a substantial proportion were made to members of the public at large with whom he was dealing at arm's length, and

(c) the loan in question, and comparable loans in general made by him at or about that time to members of the public at large with whom he was dealing at arm's length, are held on the same terms and, if those terms differ from the terms applicable immediately after the loan was first made, they were imposed in the ordinary course of his business.

(1B) For the purposes of subsection (1A) above, a loan is comparable to the loan in question if it is made for the same or similar purposes, and on the same terms and conditions, as that loan."

(4) In Schedule 7 to that Act (beneficial loan arrangements)—

(a) in paragraph 1(5) for "Sub-paragraph (2) above does" there shall be substituted " Sub-paragraphs (2) and (4) above do " and the words "his employer, being" shall cease to have effect, and

(b) Parts III to V shall cease to have effect.

F9(5) . . . . . .

(6) This section shall have effect for the year 1994-95 and subsequent years of assessment.

Textual Amendments

F9 S. 88(5) repealed (28.7.2000 with effect as mentioned in s. 57(2), Sch. 40 Pt. II(2), Note in the repealing Act) by 2000 c. 17, ss. 57(2), 156, **Sch. 40 Pt. II(2)** Note

89 Vouchers and credit-tokens.

(1) Section 141 of the Taxes Act 1988 (non-cash vouchers) shall be amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for the words from "the expense incurred" to "exchanged;" there shall be substituted "the expense incurred ("the chargeable expense")—

(i) by the person at whose cost the voucher and the money, goods or services for which it is capable of being exchanged are provided,

(ii) in or in connection with that provision;" and

(b) the words following paragraph (b) shall be omitted.

(3) In subsection (6B), in paragraph (a) for the words "the person providing the non-cash voucher" there shall be substituted " the person at whose cost the voucher and the entertainment are provided ".

(4) Section 142 of the Taxes Act 1988 (credit-tokens) shall be amended as follows.

(5) In subsection (1)(a), for the words from "the expense incurred" to "obtained;" there shall be substituted "the expense incurred—

(i) by the person at whose cost the money, goods or services are provided,

(ii) in or in connection with that provision;".

(6) In subsection (3) for the words "providing the credit-token as mentioned in subsection (1)(a) above" there shall be substituted " mentioned in subsection (1)(a)(i) above ".

(7) In subsection (3B), in paragraph (a) for the words "providing the credit-token" there shall be substituted " mentioned in subsection (1)(a)(i) above ".

(8) Section 143 of the Taxes Act 1988 (cash vouchers) shall be amended as follows.

(9) In subsection (1) for the words from "(and in particular section 203)" to "paid by his employer" there shall be substituted "—

(a) he shall be treated as having received".

(10) In subsection (3) for the words "in providing the voucher by the person who provides it" there shall be substituted " by the person at whose cost the voucher is provided ".

(11) In subsection (4)—

(a) in paragraph (a) for the words "in providing the voucher by the person who provides it" there shall be substituted " by the person at whose cost the voucher, stamp or similar document is provided "; and

(b) in the words following paragraph (b) for the words from "the expense incurred" to the end there shall be substituted " the expense incurred by the person mentioned in paragraph (a) above shall be treated as reduced by the difference or part of the difference mentioned in paragraph (b) above. "

(12) Section 144 of the Taxes Act 1988 (supplementary provisions relating to sections 141 to 143) shall be amended as follows.

(13) In subsection (1)—

(a) for the words "or credit-tokens" there shall be substituted " , credit-tokens or cash vouchers "; and

(b) for the words "141 or 142" there shall be substituted " 141, 142 or 143 ".

(14) In subsection (3)—

(a) for the words "141 and 142" there shall be substituted " 141, 142 and 143 "; and

(b) for the words "by him of non-cash" there shall be substituted " of ".

Chargeable gains

90 Annual exempt amount for 1994-95.

For the year 1994-95 section 3 of the [M3]Taxation of Chargeable Gains Act 1992 (annual exempt amount) shall have effect as if the amount specified in subsection (2) were £5,800, and accordingly subsection (3) of that section (indexation) shall not apply for that year.

Marginal Citations

M3 1992 c. 12.

91 Relief on re-investment.

(1) Schedule 11 to this Act (which extends the relief on re-investment for individuals and trustees provided by Chapter IA of Part V of the Taxation of Chargeable Gains Act 1992) shall have effect.

(2) That Schedule shall have effect in relation to disposals made on or after 30th November 1993.

(3) In section 164H(1) of that Act—

(a) for "is greater than" there shall be substituted " exceeds ", and

(b) at the end there shall be added " or half the value of the company's assets as a whole (whichever is the greater); and section 294(3) and (4) of the Taxes Act (meaning of value of company's assets as a whole) applies for the purposes of this subsection as it applies for the purposes of section 294 of that Act ".

(4) Subsection (3) above shall apply to determine whether a company is a qualifying company on or after 30th November 1993.

F10 92 . . . . . .

Textual Amendments

F10 S. 92 repealed (31.7.1998 with effect as mentioned in Sch. 27 Pt. III(31), Note in the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(31)** Note

93 Indexation losses.

(1) In section 53 of the Taxation of Chargeable Gains Act 1992 (indexation allowance), in subsection (1), for the words following "contrary" to the end of paragraph (c) there shall be substituted "if on the disposal of an asset there is an unindexed gain, an allowance ("the indexation allowance") shall be allowed against the unindexed gain—

(a) so as to give the gain for the purposes of this Act, or

(b) if the indexation allowance equals or exceeds the unindexed gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues)".

(2) In subsection (2) of that section—

(a) for "subsection (1) above" there shall be substituted " this Chapter ",

(b) for paragraph (a) there shall be substituted—

"(a) "unindexed gain" means the amount of the gain on the disposal computed in accordance with this Part", and

(c) in paragraph (b), for "gain or loss" there shall be substituted " gain ".

(3) After that subsection there shall be inserted—

"(2A) Notwithstanding anything in section 16 of this Act, this section shall not apply to a disposal on which a loss accrues."

(4) In section 55 of that Act (assets acquired on a no gain/no loss disposal), after subsection (6) there shall be inserted—

"(7) The rules in subsection (8) below apply (after the application of section 53 but before the application of section 35(3) or (4)) to give the gain or loss for the purposes of this Act where—

(a) subsection (6) above applies to the disposal (the "disposal in question") of an asset by any person (the "transferor"), and

(b) but for paragraph (b) of that subsection, the consideration the transferor would be treated as having given for the asset would include an amount or amounts of indexation allowance brought into account by virtue of section 56(2) on any disposal made before 30th November 1993.

(8) The rules are as follows—

(a) where (apart from this subsection) there would be a loss, an amount equal to the rolled-up indexation shall be added to it so as to increase it,

(b) where (apart from this subsection) the unindexed gain or loss would be nil, there shall be a loss of an amount equal to the rolled-up indexation, and

(c) where (apart from this subsection)—

(i) there would be an unindexed gain, and

(ii) the gain or loss would be nil but the amount of the indexation allowance used to extinguish the gain would be less than the rolled-up indexation,

the difference shall constitute a loss.

(9) In this section the "rolled-up indexation" means, subject to subsections (10) and (11) below, the amount or, as the case may be, the aggregate of the amounts referred to in subsection (7)(b) above; and subsections (10) and (11) below shall, as well as applying on the disposal in question, be treated as having applied on any previous part disposal by the transferor.

(10) Where, for the purposes of any disposal of the asset by the transferor, any amount falling within any, or any combination of, paragraphs (a) to (c) of section 38(1) is required by any enactment to be excluded, reduced or written down, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (11) below on a previous part disposal) shall be reduced in proportion to any reduction made in the amount falling within the paragraph, or the combination of paragraphs, in question.

(11) Where the transferor makes a part disposal of the asset at any time, then, for the purposes of that and any subsequent disposal, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (10) above on a previous part disposal by him or after the application of subsection (10) above on the part disposal) shall be apportioned between the property disposed of and the

property which remains in the same proportions as the sums falling within section 38(1)(a) and (b).”

(5) In section 56 of that Act (amount of consideration on no gain/no loss disposals)—

(a) in subsection (2) for the words preceding paragraph (a) there shall be substituted “ On a no gain/no loss disposal by any person (“the transferor”) ”, and

(b) after that subsection there shall be added—

“(3) Where apart from this subsection—

(a) a loss would accrue on the disposal of an asset, and

(b) the sums allowable as a deduction in computing that loss would include an amount attributable to the application of the assumption in subsection (2) above on any no gain/no loss disposal made on or after 30th November 1993,

those sums shall be determined as if that subsection had not applied on any such disposal made on or after that date and the loss shall be reduced accordingly or, if those sums are then equal to or less than the consideration for the disposal, the disposal shall be one on which neither a gain nor a loss accrues.

(4) For the purposes of this section a no gain/no loss disposal is one which, by virtue of any enactment other than section 35(4), 53(1) or this section, is treated as a disposal on which neither a gain nor a loss accrues to the person making the disposal.”

(6) In section 110 of that Act (indexation allowance for share pools), after subsection (6) there shall be inserted—

“(6A) Where a disposal to a person acquiring or adding to a new holding is treated by virtue of any enactment as one on which neither a gain nor a loss accrues to the person making the disposal—

(a) section 56(2) shall not apply to the disposal (and, accordingly, the amount of the consideration shall not be calculated on the assumption that a gain of an amount equal to the indexation allowance accrues to the person making the disposal), but

(b) an amount equal to the indexation allowance on the disposal shall be added to the indexed pool of expenditure for the holding acquired or, as the case may be, held by the person to whom the disposal is made (and, where it is added to the indexed pool of expenditure for a holding so held, it shall be added after any increase required by subsection (8)(a) below).”

(7) Sections 103 (collective investment schemes, etc.), 111 (building society etc. shares), 182 to 184 (groups and associated companies) and 200 (oil industry assets) of that Act (all of which relate to indexation allowance) shall cease to have effect.

(8) In Schedule 7A to that Act (restriction on set-off of pre-entry losses), in paragraph 2—

(a) in sub-paragraph (2), for the definitions of “B” and “C” there shall be substituted—

“B is the amount of the item of relevant allowable expenditure for which an amount falls to be determined under this paragraph;

C is the total amount of all the relevant allowable expenditure",

(b) in sub-paragraph (4), "except in relation to the calculation of any indexed rise" shall cease to have effect,

(c) after sub-paragraph (8) there shall be inserted—

"(8A) Where by virtue of section 55(8) the allowable loss accruing on the disposal of a pre-entry asset, or any part of the loss, is attributable to an amount ("the rolled-up amount") of rolled-up indexation (as defined in section 55(9) to (11)), then, for the purposes of this paragraph—

(a) the total amount of all the relevant allowable expenditure shall be treated as increased by the rolled-up amount, and

(b) the amount of each item of relevant allowable expenditure shall be treated as increased by so much (if any) of the rolled-up amount as is attributable to that item.

(8B) Where—

(a) section 56(3) applies on the disposal of a pre-entry asset on which an allowable loss accrues, and

(b) in accordance with that subsection, the total amount of all the relevant allowable expenditure is reduced by any amount ("the global reduction"),

the amount of each item of relevant allowable expenditure shall be treated for the purposes of this paragraph as reduced by so much (if any) of the global reduction as is attributable to that item", and

(d) in sub-paragraph (9), the definition of "indexed rise" shall cease to have effect.

(9) In paragraph 4 of that Schedule—

(a) in sub-paragraph (12) the words from "together" to the end, and

(b) sub-paragraph (13),

shall cease to have effect.

(10) In paragraph 5 of that Schedule, after sub-paragraph (2) there shall be inserted—

"(2A) In determining for the purposes of sub-paragraph (2)(a) above the amount of any loss which would have accrued if the asset had been disposed of at the relevant time at its market value at that time—

(a) it shall be assumed that the amendments of this Act made by section 93(1) to (5) of the Finance Act 1994 (indexation losses) had effect in relation to that disposal and, accordingly,

(b) references in those amendments and in subsection (11) of that section to 30th November 1993 shall be read as references to the day on which the relevant time falls."

(11) This section shall have effect in relation to disposals made on or after 30th November 1993 and Schedule 12 to this Act (which gives transitional relief) shall have effect for the years 1993–94 and 1994–95.

94 Set-off of pre-entry losses.

(1) Schedule 7A to the [M4]Taxation of Chargeable Gains Act 1992 (set off of pre-entry losses) shall be amended as follows.

(2) In sub-paragraph (3)(a) of paragraph 2 (calculation of pre-entry proportion of loss), for "assumption applying by virtue of sub-paragraphs (4) and (5)" there shall be substituted " assumptions applying by virtue of sub-paragraphs (4) to (6B) ", and for sub-paragraph (7) of that paragraph there shall be substituted the following sub-paragraphs—

"(6A) Notwithstanding anything in section 56(2), where in the case of the disposal of any pre-entry asset—

(a) any company has at any time between the relevant time and the time of the disposal acquired that asset or the equivalent asset, and

(b) the acquisition was either an acquisition in pursuance of a disposal on which there is treated by virtue of section 171 as having been neither a gain nor a loss accruing or an acquisition by virtue of which an asset is treated as the equivalent asset,

the items of relevant allowable expenditure and the times when those items shall be treated as having been incurred shall be determined for the purposes of this paragraph on the assumptions specified in sub-paragraph (6B) below.

(6B) Those assumptions are that—

(a) the company by reference to which the asset in question is a pre-entry asset, and

(b) the company mentioned in sub-paragraph (6A) above and every other company which has made an acquisition which, in relation to the disposal of that asset, falls within that sub-paragraph,

were the same person and, accordingly, that the pre-entry asset had been acquired by the company disposing of it at the time when it or the equivalent asset would have been treated for the purposes of this paragraph as acquired by the company mentioned in paragraph (a) above.

(7) In sub-paragraphs (5) to (6B) above the references to the equivalent asset, in relation to another asset acquired or disposed of by any company, are references to any asset which falls in relation to that company to be treated (whether by virtue of paragraph 1(8) above or otherwise) as the same as the other asset or which would fall to be so treated after applying, as respects other assets, the assumptions for which those sub-paragraphs provide."

(3) In paragraph 9(2)(c) (cases where a group is relevant if a company was a member of it in the accounting period in which it joined another relevant group), after "paragraph (a)" there shall be inserted " or (b) ".

(4) This section shall apply in relation to the making in respect of any loss of any deduction from a chargeable gain where either the gain or the loss is one accruing on or after 11th March 1994.

Marginal Citations

M4 1992 c. 12.

95 Commodity and financial futures.

(1) In section 143 of the [M5]Taxation of Chargeable Gains Act 1992 (commodity and financial futures and qualifying options), subsection (4) shall cease to have effect and for subsection (6) there shall be substituted the following subsections—

"(6) In any case where, in the course of dealing in commodity or financial futures, a person has entered into a futures contract and—

(a) he has not closed out the contract (as mentioned in subsection (5) above), and

(b) he becomes entitled to receive or liable to make a payment, whether under the contract or otherwise, in full or partial settlement of any obligations under the contract,

then, for the purposes of this Act, he shall be treated as having disposed of an asset (namely, that entitlement or liability) and the payment received or made by him shall be treated as consideration for the disposal or, as the case may be, as incidental costs to him of making the disposal.

(7) Section 46 shall not apply to obligations under—

(a) a commodity or financial futures contract which is entered into by a person in the course of dealing in such futures on a recognised futures exchange; or

(b) a commodity or financial futures contract to which an authorised person or listed institution is a party.

(8) In this section—

"authorised person" has the same meaning as in the Financial Services Act 1986, and

"listed institution" has the same meaning as in section 43 of that Act."

(2) This section shall apply in relation to contracts entered into on or after 30th November 1993.

Marginal Citations

M5 1992 c.12.

96 Cash-settled options.

(1) After section 144 of the [M6]Taxation of Chargeable Gains Act 1992 (options and forfeited deposits) there shall be inserted the following section—

"**144A Cash-settled options.**

(1) In any case where—

(a) an option is exercised; and

(b) the nature of the option (or its exercise) is such that the grantor of the option is liable to make, and the person exercising it is entitled to receive, a payment in full settlement of all obligations under the option,

subsections (2) and (3) below shall apply in place of subsections (2) and (3) of section 144.

(2) As regards the grantor of the option—

(a) he shall be treated as having disposed of an asset (namely, his liability to make the payment) and the payment made by him shall be treated as incidental costs to him of making the disposal; and

(b) the grant of the option and the disposal shall be treated as a single transaction and the consideration for the option shall be treated as the consideration for the disposal.

(3) As regards the person exercising the option—

(a) he shall be treated as having disposed of an asset (namely, his entitlement to receive the payment) and the payment received by him shall be treated as the consideration for the disposal;

(b) the acquisition of the option (whether directly from the grantor or not) and the disposal shall be treated as a single transaction and the cost of acquiring the option shall be treated as expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal; and

(c) for the purpose of computing the indexation allowance (if any) on the disposal, the cost of the option shall be treated (notwithstanding paragraph (b) above) as incurred when the option was acquired.

(4) In any case where subsections (2) and (3) above would apply as mentioned in subsection (1) above if the reference in that subsection to full settlement included a reference to partial settlement, those subsections and subsections (2) and (3) of section 144 shall both apply but with the following modifications—

(a) for any reference to the grant or acquisition of the option there shall be substituted a reference to the grant or acquisition of so much of the option as relates to the making and receipt of the payment or, as the case may be, the sale or purchase by the grantor; and

(b) for any reference to the consideration for, or the cost of or of acquiring, the option there shall be substituted a reference to the appropriate proportion of that consideration or cost.

(5) In this section "appropriate proportion" means such proportion as may be just and reasonable in all the circumstances."

(2) This section shall apply in relation to options granted on or after 30th November 1993.

Marginal Citations

M6 1992 c.12.

97 Settlements with foreign element: information.

(1) The [M7]Taxation of Chargeable Gains Act 1992 shall be amended as mentioned in subsections (2) to (4) below.

(2) In Chapter II of Part III (settlements) the following section shall be inserted after section 98—

"**98A Settlements with foreign element: information.**

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect."

(3) The following Schedule shall be inserted after Schedule 5—

"SCHEDULE 5A Section 98A.

SETTLEMENTS WITH FOREIGN ELEMENT: INFORMATION

1 In this Schedule "the commencement day" means the day on which the Finance Act 1994 was passed.

2 (1) This paragraph applies if—

(a) a settlement was created before 19th March 1991,

(b) on or after the commencement day a person transfers property to the trustees otherwise than under a transaction entered into at arm's length and otherwise than in pursuance of a liability incurred by any person before that day,

(c) the trustees are not resident or ordinarily resident in the United Kingdom at the time the property is transferred, and

(d) the transferor knows, or has reason to believe, that the trustees are not so resident or ordinarily resident.

(2) Before the expiry of the period of twelve months beginning with the relevant day, the transferor shall deliver to the Board a return which—

(a) identifies the settlement, and

(b) specifies the property transferred, the day on which the transfer was made, and the consideration (if any) for the transfer.

(3) For the purposes of sub-paragraph (2) above the relevant day is the day on which the transfer is made.

3 (1) This paragraph applies if a settlement is created on or after the commencement day, and at the time it is created—

(a) the trustees are not resident or ordinarily resident in the United Kingdom, or

(b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Any person who—

(a) is a settlor in relation to the settlement at the time it is created, and

(b) at that time fulfils the condition mentioned in sub-paragraph (3) below,

shall, before the expiry of the period of three months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.

(3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.

(4) The particulars are—

(a) the day on which the settlement was created;

(b) the name and address of the person delivering the return;

(c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the settlement is created.

4 (1) This paragraph applies if a settlement is created on or after 19th March 1991, and at the time it is created—

(a) the trustees are not resident or ordinarily resident in the United Kingdom, or

(b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Any person who—

(a) is a settlor in relation to the settlement at the time it is created,

(b) at that time does not fulfil the condition mentioned in sub-paragraph (3) below, and

(c) first fulfils that condition at a time falling on or after the commencement day,

shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.

(3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.

(4) The particulars are—

(a) the day on which the settlement was created;

(b) the name and address of the person delivering the return;

(c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the person first fulfils the condition as mentioned in paragraph (c) of that sub-paragraph.

5 (1) This paragraph applies if—

(a) the trustees of a settlement become at any time (the relevant time) on or after the commencement day neither resident nor ordinarily resident in the United Kingdom, or

(b) the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the relevant time) on or after the commencement day trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Any person who was a trustee of the settlement immediately before the relevant time shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying—

(a) the day on which the settlement was created,

(b) the name and address of each person who is a settlor in relation to the settlement immediately before the delivery of the return, and

(c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(3) For the purposes of sub-paragraph (2) above the relevant day is the day when the relevant time falls.

6 (1) Nothing in paragraph 2, 3, 4 or 5 above shall require information to be contained in the return concerned to the extent that—

(a) before the expiry of the period concerned the information has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or

(b) after the expiry of the period concerned the information falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.

(2) Nothing in paragraph 2, 3, 4 or 5 above shall require a return to be delivered if—

(a) before the expiry of the period concerned all the information concerned has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or

(b) after the expiry of the period concerned all the information concerned falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.”

(4) In Schedule 5, paragraphs 11 to 14 (information) shall be omitted.

(5) Subsection (4) above shall have effect where the relevant day falls on or after the day on which this Act is passed.

(6) In the Table in section 98 of the [M8]Taxes Management Act 1970 (penalties) at the end of the second column there shall be inserted—

“ Paragraphs 2 to 6 of Schedule 5A to the 1992 Act. ”

Marginal Citations

M7 1992 c. 12.

M8 1970 c. 9.

Profit-related pay

[F11]98 . . . . . .

Textual Amendments

F11 S. 98 repealed (19.3.1997 with effect as mentioned in s. 61(2)(3), Sch. 18 Pt. VI(3), Notes 1, 2 in the repealing Act) by 1997 c. 16, ss. 61(2)(3), 113, **Sch. 18 Pt. VI(3)**, Notes 1, 2

F12 99 . . . . . .

Textual Amendments

F12 S. 99 repealed (19.3.1997 with effect as mentioned in s. 61(2)(3), Sch. 18 Pt. VI(3), Notes 1, 2 in the repealing Act) by 1997 c. 16, ss. 61(2)(3), 113, **Sch. 18 Pt. VI(3)**, Notes 1, 2

Profit sharing schemes

100 Relevant age for purpose of appropriate percentage.

(1) Schedule 10 to the Taxes Act 1988 (profit sharing schemes) shall be amended as follows.

(2) In paragraph 3 (the appropriate percentage for purposes of tax charge) the words from "In this paragraph" to the end of the paragraph shall be omitted.

(3) The following paragraph shall be inserted after paragraph 3—

"3A (1) In paragraph 3 above the reference to the relevant age shall be construed as follows.

(2) Where the scheme is approved before 25th July 1991 and the event occurs before 30th November 1993, the relevant age is pensionable age.

(3) Where—

(a) the scheme is approved before 25th July 1991,

(b) the event occurs on or after 30th November 1993,

(c) the scheme defines the period of retention by reference to the age of 60 for both men and women, and

(d) the reference to that age is incorporated in the definition by virtue of an alteration approved by the Board under paragraph 4 of Schedule 9 before the event occurs,

the relevant age is 60.

(4) Where—

(a) the scheme is approved before 25th July 1991,

(b) the event occurs on or after 30th November 1993, and

(c) sub-paragraph (3) above does not apply,

the relevant age is pensionable age.

(5) Where the scheme is approved on or after 25th July 1991, the relevant age is the specified age."

101 Acceptance of qualifying corporate bonds for shares.

(1) Schedule 10 to the Taxes Act 1988 (profit sharing schemes) shall be amended as mentioned in subsections (2) to (4) below.

(2) In paragraph 1 (limitations on contractual obligations of participants) in sub-paragraph (1) the following paragraph shall be inserted after paragraph (c)—

"(cc) directing the trustees to accept an offer of a qualifying corporate bond, whether alone or with cash or other assets or both, for his shares if the offer forms part of a general offer which is made as mentioned in paragraph (c) above; or".

(3) In paragraph 1 the following sub-paragraph shall be inserted after sub-paragraph (3)—

"(4) In sub-paragraph (1)(cc) above "qualifying corporate bond" shall be construed in accordance with section 117 of the 1992 Act."

(4) The following paragraph shall be inserted after paragraph 5 (company reconstructions) —

"5A (1) Paragraph 5(2) to (6) above apply where there occurs in relation to any of a participant's shares ("the original holding") a relevant transaction which would result in a new holding being equated with the original holding for the purposes of capital gains tax, were it not for the fact that what would be the new holding consists of or includes a qualifying corporate bond; and "relevant transaction" here means a transaction mentioned in Chapter II of Part IV of the 1992 Act.

(2) In paragraph 5(2) to (6) above as applied by this paragraph—

(a) references to a company reconstruction are to the transaction referred to in sub-paragraph (1) above;

(b) references to the new holding are to what would be the new holding were it not for the fact mentioned in sub-paragraph (1) above;

(c) references to the original holding shall be construed in accordance with sub-paragraph (1) above (and not paragraph 5(1));

(d) references to shares, in the context of the new holding, include securities and rights of any description which form part of the new holding.

(3) In sub-paragraph (1) above "qualifying corporate bond" shall be construed in accordance with section 117 of the 1992 Act."

(5) In paragraph 32(1) of Schedule 9 to the Taxes Act 1988 (requirements applicable to profit sharing schemes) for "or (c)" there shall be substituted " , (c) or (cc) ".

(6) In paragraph 33(a) of Schedule 9 to the Taxes Act 1988 (which provides that the trust instrument must contain certain provision by reference to new shares within the meaning of paragraph 5 of Schedule 10) the reference to paragraph 5 of Schedule 10 shall be construed as including a reference to that paragraph as applied by paragraph 5A.

(7) Subsections (2) and (3) above shall have effect where a direction is made on or after the day on which this Act is passed.

(8) Subsection (4) above shall have effect where what would be the new holding comes into being on or after the day on which this Act is passed; but this is subject to subsection (13) below.

(9) Subsection (5) above shall have effect in relation to any scheme not approved before the day on which this Act is passed.

(10) In a case where—

(a) a scheme is approved before the day on which this Act is passed, and

(b) on or after that day the trust instrument is altered in such a way that paragraph 32(1) of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (5) above applied in relation to the scheme,

subsection (5) above shall apply in relation to the scheme with effect from the time the alteration is made.

(11) Subsection (6) above shall have effect in relation to any scheme not approved before the day on which this Act is passed.

(12) In a case where—

(a) a scheme is approved before the day on which this Act is passed, and

(b) on or after that day the trust instrument is altered in such a way that paragraph 33(a) of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (6) above applied in relation to the scheme,

subsection (6) above shall apply in relation to the scheme with effect from the time the alteration is made.

(13) In a case where—

(a) a scheme is approved before the day on which this Act is passed,

(b) subsection (4) above would apply in relation to the scheme by virtue of subsection (8) above and apart from this subsection, and

(c) the trust instrument is not altered as mentioned in subsection (12)(b) above before what would be the new holding comes into being,

subsection (4) above shall not apply in relation to the scheme.

(14) Subsection (6) above shall not imply a contrary intention for the purposes of section 20(2) of the [M9]Interpretation Act 1978 in its application to other references to paragraph 5 of Schedule 10 to the Taxes Act 1988.

Marginal Citations

M9 1978 c.30.

Employee share ownership trusts

102 Employee share ownership trusts.

Schedule 13 to this Act (which contains provisions about employee share ownership trusts) shall have effect.

Retirement benefits schemes

103 The administrator.

(1) The following section shall be inserted after section 611 of the Taxes Act 1988—

"611AA Definition of the administrator.

(1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.

(2) Subject to subsection (7) below, where—

(a) the scheme is a trust scheme, and

(b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the trustee or trustees of the scheme.

(3) Subject to subsection (7) below, where—

(a) the scheme is a non-trust scheme, and

(b) at any time the scheme sponsor, or any of the scheme sponsors, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the scheme sponsor or scheme sponsors.

(4) At any time when the trustee of a trust scheme is not resident in the United Kingdom or (if there is more than one trustee) none of the trustees is so resident, the trustee or trustees shall ensure that there is a person, or there are persons—

(a) resident in the United Kingdom, and

(b) appointed by the trustee or trustees to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(5) At any time when the scheme sponsor of a non-trust scheme is not resident in the United Kingdom or (if there is more than one scheme sponsor) none of the scheme sponsors is so resident, the scheme sponsor or scheme sponsors shall ensure that there is a person, or there are persons—

(a) resident in the United Kingdom, and

(b) appointed by the scheme sponsor or scheme sponsors to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(6) Without prejudice to subsections (4) and (5) above—

(a) the trustee or trustees of a trust scheme, or

(b) the scheme sponsor or scheme sponsors of a non-trust scheme,

may at any time appoint a person who is, or persons who are, resident in the United Kingdom to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(7) Where at any time there is or are a person or persons—

(a) for the time being appointed under subsection (4), (5) or (6) above as regards a scheme, and

(b) resident in the United Kingdom,

the administrator of the scheme at that time shall be that person or those persons (and no other person).

(8) Any appointment under subsection (4), (5) or (6) above—

(a) must be in writing, and

(b) if made after the time when the scheme is established, shall constitute an alteration of the scheme for the purposes of section 591B(2).

(9) In this section—

(a) references to a trust scheme are to a retirement benefits scheme established under a trust or trusts;

(b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time;

(c) references to a non-trust scheme are to a retirement benefits scheme not established under a trust or trusts, and

(d) references to the scheme sponsor or scheme sponsors, in relation to a retirement benefits scheme and to a particular time, are references to any person who established the scheme and is in existence at that time or, if more than one, all such persons."

(2) In consequence of subsection (1) above, in section 612(1) of the Taxes Act 1988 (interpretation of Chapter I of Part XIV) the definition of "administrator" shall cease to have effect.

(3) This section—

(a) so far as it relates to section 591B(1) of the Taxes Act 1988, shall apply in relation to notices given on or after the day on which this Act is passed;

(b) so far as it relates to section 593(3) of that Act, shall apply in relation to contributions paid on or after that day;

(c) so far as it relates to section 596A(3) of that Act, shall apply in relation to benefits received on or after that day;

(d) so far as it relates to sections 598(2) and (4), 599(3) and 599A(2) of that Act, shall apply in relation to payments made on or after that day;

(e) so far as it relates to section 602(1) and (2) of that Act and regulations made under section 602, shall apply in relation to amounts becoming recoverable on or after that day;

(f) so far as it relates to section 604(1) of that Act, shall apply in relation to applications made on or after that day;

(g) so far as it relates to section 605(1) and (4) of that Act, shall apply in relation to notices given on or after that day.

104 Default of administrator etc.

(1) The following section shall be substituted for section 606 of the Taxes Act 1988—

"**606 Default of administrator etc.**

(1) This section applies in relation to a retirement benefits scheme if at any time—

(a) there is no administrator of the scheme, or

(b) the person who is, or all of the persons who are, the administrator of the scheme cannot be traced, or

(c) the person who is, or all of the persons who are, the administrator of the scheme is or are in default for the purposes of this section.

(2) If the scheme is a trust scheme, then—

(a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is fulfilled, the trustee or trustees shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator's capacity as such (whenever falling due);

(b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator, or a trustee, of the scheme.

(3) The condition is that there is at least one trustee of the scheme who—

(a) can be traced,

(b) is resident in the United Kingdom, and

(c) is not in default for the purposes of this section.

(4) If the scheme is a non-trust scheme, then—

(a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is fulfilled, the scheme sponsor or scheme sponsors shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator's capacity as such (whenever falling due);

(b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator of the scheme, or a scheme sponsor.

(5) The condition is that there is at least one scheme sponsor who—

(a) can be traced,

(b) is resident in the United Kingdom, and

(c) is not in default for the purposes of this section.

(6) Where at any time—

(a) paragraph (b) or (c) of subsection (1) above applies in relation to a scheme, and

(b) a person is by virtue of this section responsible for the discharge of any duties, or liable for any tax, in relation to the scheme,

then at that time the person or persons mentioned in paragraph (b) or (as the case may be) paragraph (c) of subsection (1) above shall not, by reason only of being the administrator of the scheme, be responsible for the discharge of those duties or liable for that tax.

(7) Where the scheme is a trust scheme and the employer is not a contributor to the scheme, subsection (2) above shall have effect as if—

(a) for "the employer", in the first place where those words occur, there were substituted "the scheme sponsor or scheme sponsors", and

(b) for "the employer", in the second place where those words occur, there were substituted "scheme sponsor".

(8) Where the scheme is a non-trust scheme and the employer is not a contributor to the scheme, subsection (4) above shall have effect as if paragraph (b) and the words after that paragraph were omitted.

(9) No liability incurred under this Chapter—

(a) by the administrator of a scheme, or

(b) by a person by virtue of this section,

shall be affected by the termination of a scheme or by its ceasing to be an approved scheme or to be an exempt approved scheme.

(10) Where by virtue of this section a person becomes responsible for the discharge of any duties, or liable for any tax, the Board shall, as soon as is reasonably practicable, notify him of that fact; but any failure to give such notification shall not affect that person's being responsible or liable by virtue of this section.

(11) A person is in default for the purposes of this section if—

(a) he has failed to discharge any duty imposed on him under this Chapter, or

(b) he has failed to pay any tax due from him by virtue of this Chapter,

and (in either case) the Board consider the failure to be of a serious nature.

(12) References in this section to a trust scheme, a non-trust scheme, trustees and scheme sponsors shall be construed in accordance with section 611AA.

(13) References in this section to the employer include, where the employer is resident outside the United Kingdom, references to any branch or agent of the employer in the United Kingdom, and in this subsection "branch or agent" has the meaning given by section 118(1) of the Management Act.

(14) This section does not apply for the purposes of sections 602 and 603 and Schedule 22."

(2) In consequence of subsection (1) above, in section 607(3)(b)(iii) of the Taxes Act 1988 for the words "section 606(1) and (3)" there shall be substituted " section 606(2)(b), (4)(b), (7), (8) and (13) ".

(3) This section shall apply where the time in question falls on or after the day on which this Act is passed.

105 Information.

(1) The Taxes Act 1988 shall be amended in accordance with subsections (2) and (3) below.

(2) In section 605 (information) at the beginning there shall be inserted the following subsections—

"(1A) The Board may by regulations make any of the following provisions—

(a) provision requiring prescribed persons to furnish to the Board at prescribed times information relating to any of the matters mentioned in subsection (1B) below;

(b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;

(c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;

(d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;

(e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.

(1B) The matters referred to in subsection (1A) above are—

(a) an approved scheme;

(b) a relevant statutory scheme;

(c) an annuity contract by means of which benefits provided under an approved scheme or a relevant statutory scheme have been secured;

(d) a retirement benefits scheme which is not an approved scheme but in relation to which an application for approval for the purposes of this Chapter has been made.

(1C) A person who fails to comply with regulations made under subsection (1A) (e) above shall be liable to a penalty not exceeding £3,000.

(1D) Regulations under subsection (1A) above may make different provision for different descriptions of case.

(1E) In subsection (1A) above "prescribed" means prescribed by regulations made under that subsection."

(3) Subsections (1) and (2) of section 605 shall cease to have effect.

(4) In section 98 of the [M10]Taxes Management Act 1970 (penalties for failure to provide information etc.)—

(a) in the first column of the Table after the entry "regulations under section 602;" there shall be inserted the entry " regulations under section 605(1A)(b) to (d); ";

(b) in the first column of the Table for the entry "section 605(1), (2), (3)(b) and (4);" there shall be substituted the entry " section 605(3)(b) and (4); ";

(c) in the second column of the Table after the entry "regulations under section 602;" there shall be inserted the entry " regulations under section 605(1A)(a); ".

(5) Subsections (3) and (4)(b) above shall come into force on such day as the Treasury may by order appoint.

Subordinate Legislation Made

P1 S. 105(5) power exercised: 1.1.1996 appointed by S.I. 1995/3125, **art. 2**

Commencement Information

I1 S 105 wholly in force at 1.1.1996; s. 105 in force at Royal Assent except for s. 105(3)(4)(b) see s. 105(5); s. 105(3)(4)(b) in force at 1.1.1996 by S.I. 1995/3125, **art. 2**

Marginal Citations

M10 1970 c. 9.

106 False statements etc.

(1) The following section shall be inserted after section 605 of the Taxes Act 1988—

"**605A False statements etc.**

(1) A person who fraudulently or negligently makes a false statement or false representation on making an application for the approval for the purposes of this Chapter of—

(a) a retirement benefits scheme, or

(b) an alteration in such a scheme,

shall be liable to a penalty not exceeding £3,000.

(2) In a case where—

(a) a person fraudulently or negligently makes a false statement or false representation, and

(b) in consequence that person, or any other person, obtains relief from or repayment of tax under this Chapter,

the person mentioned in paragraph (a) above shall be liable to a penalty not exceeding £3,000."

(2) This section shall apply in relation to things done or omitted after the day on which this Act is passed.

107 Discretionary approval.

(1) Section 591 of the Taxes Act 1988 (discretionary approval of retirement benefits schemes) shall be amended as follows.

(2) In subsection (2)(g) (annuity contracts)—

(a) after "relevant benefits" there shall be inserted " falling within subsection (2A) below ";

(b) the words "approved by the Board and" shall be omitted.

(3) The following subsection shall be inserted after subsection (2)—

"(2A) Relevant benefits fall within this subsection if they correspond with benefits that could be provided by an approved scheme, and for this purpose—

(a) a hypothetical scheme (rather than any particular scheme) is to be taken, and

(b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken."

(4) This section shall apply in relation to a scheme not approved by virtue of section 591 of the Taxes Act 1988 before 1st July 1994.

108 Taxation of benefits of non-approved schemes.

(1) Section 596A of the Taxes Act 1988 (taxation of benefits under non-approved schemes) shall be amended as follows.

(2) In subsection (4), at the beginning there shall be inserted " Subject to subsection (9) below ".

(3) For subsection (6) there shall be substituted—

"(6) Tax shall not be charged under this section in the case of—

(a) any pension or annuity which is chargeable to tax under Schedule E by virtue of section 19(1); or

(b) any pension or other benefit chargeable to tax under section 58."

(4) In subsection (7)—

(a) for the words "by virtue of section 19(1)1", in the first place where they occur, there shall be substituted " as mentioned in subsection (6)(a) above ";

(b) in paragraph (a), for the words "subsection (6) above" there shall be substituted " subsection (6)(a) above "; and

(c) in paragraph (b) for the words "section 19(1)1" there shall be substituted " section 19(1) ".

(5) For subsections (8) and (9) there shall be substituted—

"(8) Subject to subsection (9) below, tax shall not be charged under this section (or section 19(1) or 148) in the case of a lump sum where—

(a) the employer has paid any sum or sums with a view to the provision of any relevant benefits under a retirement benefits scheme;

(b) an employee has been assessed to tax in respect of the sum or sums by virtue of section 595(1); and

(c) the lump sum is provided under the scheme to the employee, any person falling within section 595(5) in relation to the employee or any other individual designated by the employee.

(9) Where any of the income or gains accruing to the scheme under which the lump sum is provided is not brought into charge to tax, tax shall be charged under this section on the amount of the lump sum received less any deduction applicable under subsection (10) or (11) below.

(10) Subject to subsection (11) below, the deduction applicable is the aggregate of—

(a) any sum or sums in respect of which the employee has been assessed as mentioned in subsection (8)(b) above, and

(b) any sum or sums paid by the employee,

which in either case were paid by way of contribution to the provision of the lump sum.

(11) Where—

(a) the lump sum is provided under the scheme on the disposal of a part of any asset or the surrender of any part of or share in any rights in any asset, and

(b) the employee, any person falling within section 595(5) in relation to the employee or any person connected with the employee has any right to receive or any expectation of receiving a further lump sum (or further lump sums) under the scheme on a further disposal of any part of the asset or a further surrender of any part of or share in any rights in the asset,

the deduction applicable shall be determined in accordance with the formula in subsection (12) below.

(12) The formula is—

$$D = S \text{ x } \frac{A}{B}$$

(13) For the purposes of the formula in subsection (12) above—

D is the deduction applicable;

S is the aggregate amount of any sum or sums of a description mentioned in paragraphs (a) and (b) of subsection (10) above;

A is the amount of the lump sum received in relation to which the deduction applicable falls to be determined;

B is the market value of the asset in relation to which the disposal or surrender occurred, on the assumption that the valuation is made immediately before the disposal or surrender.

(14) An individual may not claim that a deduction is applicable in relation to a lump sum more than once.

(15) For the purposes of subsections (8) and (9) above, it shall be assumed unless the contrary is shown—

(a) that no sums have been paid, and the employee has not been assessed in respect of any sums paid, with a view to the provision of relevant benefits;

(b) that the income or gains accruing to a scheme under which the benefit is provided are not brought into charge to tax; and

(c) that no deduction is applicable under subsection (10) or (11) above.

(16) Section 839 shall apply for the purposes of subsection (11) above.

(17) In subsection (13) above "market value" shall be construed in accordance with section 272 of the 1992 Act."

(6) The amendments of section 596A made by this section shall have effect in relation to retirement benefit schemes—

(a) entered into on or after 1st December 1993, or

(b) entered into before that day if the scheme is varied on or after that day with a view to the provision of the benefit.

(7) Subject to subsection (8) below, in the Taxes Act 1988—

(a) in section 188(1), paragraph (c), and

(b) in section 189, paragraph (b),

(exemption from tax where recipient of benefit or lump sum chargeable to tax in respect of sums paid or treated as paid with a view to the provision of the benefit or lump sum) shall cease to have effect in relation to any benefit provided or lump sum paid on or after 1st December 1993.

(8) The repeals made by subsection (7) above shall not have effect in relation to any benefit provided or lump sum paid on or after 1st December 1993 in pursuance of a scheme or arrangement entered into before that day unless the scheme or arrangement is varied on or after that day with a view to the provision of the benefit or lump sum.

Annuities

109 Annuities derived from personal pension schemes.

(1) In Chapter IV of Part XIV of the Taxes Act 1988 (personal pension schemes) the following shall be inserted after section 648—

" Annuities: charge to tax

648A Annuities: charge under Schedule E.

(1) Subject to subsection (2) below, where funds held for the purposes of an approved personal pension scheme are used to acquire an annuity—

(a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;

(b) the annuity shall not be charged to tax under Case III of Schedule D.

(2) As respects any approved personal pension scheme the Board may direct that, until such date as the Board may specify, annuities acquired with funds held for the purposes of the scheme shall be charged to tax as annual payments

under Case III of Schedule D, and tax shall be deductible under sections 348 and 349 accordingly."

(2) This section shall apply in relation to payments which are made under annuities on or after 6th April 1995.

110 Annuities derived from retirement benefits schemes.

(1) In section 597 of the Taxes Act 1988 (pensions paid under retirement benefits schemes generally charged under Schedule E) the following subsection shall be inserted after subsection (2)—

"(3) Without prejudice to subsection (1) above, where funds held for the purposes of any scheme which is approved or is being considered for approval under this Chapter are used to acquire an annuity—

(a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;

(b) the annuity shall not be charged to tax under Case III of Schedule D."

(2) This section shall apply in relation to payments which are made under annuities on or after the day on which this Act is passed.

Authorised unit trusts

F13 111 . . . . . .

Textual Amendments

F13 S. 111 repealed (29.4.1996 with effect as mentioned in Sch. 41 Pt. V(1) Note 1 of the amending Act) by 1996 c. 8, ss. 73, 205, Sch. 6 para. 28, **Sch. 41 Pt. V(1)** Note 1

112 Distributions of authorised unit trusts.

Schedule 14 to this Act (distributions of authorised unit trusts) shall have effect.

113 Umbrella schemes.

(1) In section 468 of the Taxes Act 1988 (authorised unit trusts), in subsection (6) (definitions) at the beginning there shall be inserted " Subject to subsections (7) to (9) below ".

(2) After that subsection there shall be added—

"(7) Each of the parts of an umbrella scheme shall be regarded for the purposes of this Chapter as an authorised unit trust and the scheme as a whole shall not be so regarded.

(8) In this section, "umbrella scheme" means a unit trust scheme—

(a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them;

(b) under which the participants are entitled to exchange rights in one pool for rights in another; and

(c) in the case of which an order under section 78 of the Financial Services Act 1986 is in force;

and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.

(9) In relation to a part of an umbrella scheme, any reference—

(a) to investments subject to the trusts of an authorised unit trust, shall have effect as a reference to such of the investments as under the arrangements form part of the separate pool to which the part of the umbrella scheme relates; and

(b) to a unit holder, shall have effect as a reference to a person for the time being having rights in that separate pool."

(3) In section 469 of the Taxes Act 1988 (other unit trusts)—

(a) in subsection (1)(a) (application of section) for the words "that is not an authorised unit trust" there shall be substituted " that is neither an authorised unit trust nor an umbrella scheme "; and

(b) after subsection (6) there shall be inserted—

"(6A) In this section "umbrella scheme" has the same meaning as in section 468."

(4) Subject to what follows, the amendments made by subsections (1) to (3) above shall have effect on and after 1st April 1994 in relation to unit trust schemes and their participants.

(5) Nothing in those amendments shall have effect before the relevant date in relation to a unit trust scheme which immediately before 1st April 1994 falls within the definition of an umbrella scheme contained in those amendments.

(6) In this section "the relevant date", means, in relation to a unit trust scheme, the day after the end of the last distribution period of the scheme which commences before 1st April 1994.

(7) On and after the relevant date, the amendments made by subsections (1) to (3) above shall have effect in relation to a scheme—

(a) to which subsection (5) above applies, and

(b) which immediately before the relevant date falls within the definition of an umbrella scheme contained in those amendments,

subject to subsections (8) to (10) below.

(8) The amendments made by subsections (1) to (3) above shall not prevent the trustees of the scheme on and after the relevant date—

(a) making a claim under section 239(3) of the Taxes Act 1988 (carry back of surplus advance corporation tax) in respect of accounting periods of the scheme ending before the relevant date; or

(b) continuing anything which immediately before that date was in the process of being done for the purposes of tax in relation to such accounting periods.

(9) Where immediately before the relevant date the trustees of the scheme are entitled to carry forward an excess under—

(a) section 75(3) of the Taxes Act 1988 (carry forward of management expenses and sums treated as management expenses), or

(b) section 241 of that Act (carry forward of franked investment income),

then, on the relevant date, that right shall be translated into a right in each successor company to carry forward a proportionate part of that excess.

(10) Where immediately before the relevant date the trustees of the scheme have an amount of surplus advance corporation tax which—

(a) has not been dealt with under subsection (3) of section 239 of the Taxes Act 1988, and

(b) is due to be treated under subsection (4) of that section as if it were advance corporation tax paid by them in their next accounting period,

then, on and after the relevant date, a proportionate part of that amount shall be treated as paid under subsection (4) of that section by each successor company in its first accounting period.

(11) In subsections (9) and (10) above "successor company" means, in relation to a scheme, each part of the scheme which on the relevant date becomes an authorised unit trust.

Exchange gains and losses

114 Assets and liabilities.

(1) In section 154 of the [M11]Finance Act 1993 (definitions connected with assets) the following subsections shall be inserted after subsection (5)—

"(5A) The question whether a company becomes unconditionally entitled at a particular time to an asset falling within section 153(1)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.

(5B) Where an asset falling within section 153(1)(a) above consists of a right to interest—

(a) a company becomes unconditionally entitled to the asset at the time when or (as the case may be) before which the interest is required to be paid to the company, and

(b) subsection (5A) above shall not apply."

(2) In that section the following subsections shall be inserted after subsection (13)—

"(13A) In a case where—

(a) a company would (apart from this subsection) become entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,

(b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,

(c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the later time) later than the earlier time, and

(d) the accounts are drawn up in accordance with normal accountancy practice,

the company shall be taken to become entitled to the asset at the later time and not at the earlier time.

(13B) In a case where—

(a) a company would (apart from this subsection) cease to be entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,

(b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,

(c) the time at which the company, in drawing up its accounts, regards itself as ceasing to be entitled to the asset is a time (the later time) later than the earlier time, and

(d) the accounts are drawn up in accordance with normal accountancy practice,

the company shall be taken to cease to be entitled to the asset at the later time and not at the earlier time."

(3) In section 155 of that Act (definitions connected with liabilities) the following subsections shall be inserted after subsection (4)—

"(4A) The question whether a company becomes unconditionally subject at a particular time to a liability falling within section 153(2)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.

(4B) Where a liability falling within section 153(2)(a) above consists of a duty to pay interest—

(a) a company becomes unconditionally subject to the liability at the time when or (as the case may be) before which the company is required to pay the interest, and

(b) subsection (4A) above shall not apply."

Marginal Citations

M11 1993 c. 34.

115 Currency contracts: net payments.

(1) In section 126 of the [M12]Finance Act 1993 (accrual on currency contracts) the following subsection shall be inserted after subsection (1)—

"(1A) In deciding whether a contract falls within subsection (1) above it is immaterial that the rights and duties there mentioned may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in that subsection."

(2) In section 146 of that Act (early termination of currency contract) the following subsection shall be inserted after subsection (1)—

"(1A) This section also applies where—

(a) a qualifying company ceases to be entitled to rights and subject to duties under a currency contract, and

(b) it so ceases by virtue of the making of a payment to or by the company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in section 126(1) above."

(3) In section 164(2) of that Act (definition of currency contract for purposes of the Chapter) after "(1)" there shall be inserted " and (1A) ".

Marginal Citations
M12 1993 c. 34.

116 Currency contracts: matching.

(1) Schedule 15 to the [M13]Finance Act 1993 (alternative calculation) shall be amended as follows.

(2) The following shall be inserted after paragraph 4—

"4A **Currency contracts: matching**

(1) Regulations may provide that where—

(a) as regards a contract an initial exchange gain or initial exchange loss accrues to a company for an accrual period under section 126(5) of this Act or would so accrue apart from regulations under this Schedule,

(b) the relevant duty is eligible to be matched on any day in the accrual period with an asset held by the company, and such other conditions as may be prescribed are fulfilled, and

(c) an election is made in accordance with the regulations to match the duty with the asset on any such day and the election has effect by virtue of the regulations,

the amount of the gain or loss shall be found in accordance with the alternative method of calculation.

(2) Regulations may also provide that as regards any day in respect of which an election has effect the accrued amount shall be ascertained in accordance with prescribed rules.

(3) The reference in sub-paragraph (1) above to the relevant duty is to the duty to which, under the contract, the company becomes subject as regards the second currency (within the meaning given by section 126 of this Act).

(4) Where regulations are made under this paragraph, sub-paragraphs (3) to (12) of paragraph 4 above shall apply as they apply where regulations are made under that paragraph; but in the application of those sub-paragraphs by virtue of this sub-paragraph—

(a) the references to a liability in sub-paragraphs (3), (4), (9) and (11) shall be construed as references to a duty,

(b) the references to liabilities in sub-paragraphs (3) and (4) shall be construed as references to duties, and

(c) the reference in sub-paragraph (11)(a) to sub-paragraph (1) of paragraph 4 shall be construed as a reference to sub-paragraph (1) above."

(3) The following paragraph shall be inserted after paragraph 5—

"5A (1) This paragraph applies where regulations under both paragraph 2 and paragraph 4A above apply—

(a) as regards the same contract, and

(b) for the same accrual period.

(2) Regulations may provide that, as regards any day falling within the period and identified in accordance with prescribed rules, the accrued amount shall be ascertained in accordance with rules prescribed under this paragraph (rather than provisions made under either of those paragraphs)."

(4) In paragraph 6—

(a) for "paragraphs 2 to 5 above" there shall be substituted " the relevant paragraphs ";

(b) at the end there shall be inserted " ; and the relevant paragraphs are paragraphs 2, 3, 4 and 5 above. "

(5) In paragraph 7 for "5" there shall be substituted " 5A ".

Marginal Citations

M13 1993 c. 34.

Capital allowances

F14 117 . . . . . .

Textual Amendments

F14 S. 117 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

118 Expenditure on machinery or plant: notification.

F15(1) . . . . . .

F15(2) . . . . . .

F15(3) . . . . . .

F15(3A) . . . . . .

F15(4) . . . . . .

F15(5) . . . . . .

(6) For the purposes of—

[F16F17(a) . . . . . .

(b) section 44(4) of the Finance Act 1971 (provision corresponding to section 25(1) applicable to earlier chargeable periods),**]**

expenditure which has not formed part of a person's qualifying expenditure for a previous chargeable period may not form part of his qualifying expenditure for a subsequent chargeable period unless the machinery or plant on which the expenditure was incurred belongs to that person at some time in that subsequent period F18. . .

F15(7) . . . . . .

F15(8) . . . . . .

F15(9) . . . . . .

Textual Amendments

F15 S. 118(1)-(5)(7)-(9) repealed (28.7.2000 with effect as mentioned in s. 73(2) of the repealing Act) by 2000 c. 17, ss. 73(1)(a), 156, **Sch. 40 Pt. II(8)**, Note 3

F16 S. 118(6)(a)(b) substituted for words in s. 118(6) (28.7.2000 with effect as mentioned in s. 73(2) of the amending Act) by 2000 c. 17, **s. 73(1)(b)**

F17 S. 118(6)(a) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

F18 Words in s. 118(6) repealed (3.5.1994 with effect as mentioned in ss. 211(2), 218(1)(b) of the amending Act) by 1994 c. 9, s. 258, **Sch. 26 Pt. V(24)**, Note 5

119 Transactions between connected persons.

F19(1) . . . . . .

(2) Paragraph 4(2) of Schedule 7 to the M14Capital Allowances Act 1968 (provision corresponding to section 158(2)) shall be assumed always to have had effect subject to amendments corresponding to those made to section 158(2) of the 1990 Act by section 117(2) and (3) of the Finance Act 1993.

Textual Amendments

F19 S. 119(1) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

Marginal Citations

M14 1968 c. 3.

F20120 . . . . . .

Textual Amendments

F20 S. 120 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

F21 121 . . . . . .

Textual Amendments

F21 S. 121 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

Securities

122 Sale and repurchase of securities: deemed manufactured payments.

After section 737 of the Taxes Act 1988 there shall be inserted the following sections—

"**737A Sale and repurchase of securities: deemed manufactured payments.**

(1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, and under the same or any related agreement the transferor or another person connected with him—

(a) is required to buy back the securities, or

(b) acquires an option, which he subsequently exercises, to buy back the securities;

but this section does not apply unless the conditions set out in subsection (2) below are fulfilled.

(2) The conditions are that—

(a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,

(b) the dividend is not, by virtue of any other provision of the Tax Acts, treated as income of the transferor,

(c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and

(d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.

(3) For the purposes of subsection (2) above the relevant date is the date when the repurchase price of the securities becomes due.

(4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.

(5) Where this section applies, section 737 and Schedule 23A and dividend manufacturing regulations shall apply as if—

(a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) above,

(b) a payment were made by that person to the transferor in discharge of that requirement, and

(c) the payment were made on the date when the repurchase price of the securities becomes due.

(6) In subsection (5) above "the relevant person" means—

(a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;

(b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;

and in that subsection "dividend manufacturing regulations" means regulations under Schedule 23A (whenever made).

737B Interpretation of section 737A.

(1) In section 737A and this section "securities" means United Kingdom equities, United Kingdom securities or overseas securities; and—

(a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;

(b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.

(2) In this section "United Kingdom equities", "United Kingdom securities", "overseas securities" and "overseas dividend" have the meanings given by paragraph 1(1) of Schedule 23A.

(3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) In section 737A "the repurchase price of the securities" means—

(a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or

(b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.

(5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.

(6) For the purposes of subsection (5) above securities are similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective

securities or in the form in which they are held or the manner in which they can be transferred; and "interest" here includes dividends.

(7) For the purposes of section 737A and subsection (4) above—

(a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and

(b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.

(8) Section 839 shall apply for the purposes of section 737A and this section.

(9) In section 737A "the appointed day" means such day as the Treasury may by order appoint, and different days may be appointed in relation to—

(a) United Kingdom equities,

(b) United Kingdom securities, and

(c) overseas securities.

737C Deemed manufactured payments: further provisions.

(1) This section applies where section 737A applies.

(2) Subsection (3) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is a dividend on United Kingdom equities, and

(b) by virtue of section 737A(5), section 737 and paragraph 2 of Schedule 23A apply, or paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (3) below "the deemed manufactured dividend" means that payment.

(3) Where this subsection applies—

(a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a);

(b) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by an amount equal to the gross amount of the deemed manufactured dividend.

(4) In subsection (3) above the reference to the gross amount of the deemed manufactured dividend is to the aggregate of—

(a) the amount of the deemed manufactured dividend, and

(b) the amount of the tax credit that would have been issued in respect of the deemed manufactured dividend had the deemed manufactured dividend in fact been a dividend on the United Kingdom equities.

(5) Subsection (6) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and

(b) by virtue of section 737A(5), section 737 applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (6) below "the deemed manufactured interest" means the payment referred to in paragraph (b) above.

(6) Where this subsection applies, the amount of the deemed manufactured interest shall be taken to be an amount equal to the gross amount of the periodical payment referred to in subsection (5)(a) above reduced by an amount equal to income tax thereon at the basic rate for the year of assessment in which that periodical payment is made.

(7) Subsection (8) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and

(b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made (whether or not section 737 also applies in relation to that payment);

and in subsection (8) below "the deemed manufactured interest" means the payment referred to in paragraph (b) above.

(8) Where this subsection applies—

(a) the gross amount of the deemed manufactured interesthall be taken to be the amount found under paragraph 3(4) of Schedule 23A;

(b) any deduction which, by v 3 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.

(9) Where subsections (6) and (8) above apply, or where subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured interest.

(10) Subsection (11) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is an overseas dividend, and

(b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (11) below "the deemed manufactured overseas dividend" means that payment.

(11) Where this subsection applies—

(a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;

(b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;

(c) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured overseas dividend.

(12) In this section—

(a) "United Kingdom equities", "United Kingdom securities" and "overseas dividend" have the meanings given by paragraph 1(1) of Schedule 23A;

(b) "the repurchase price of the securities" shall be construed in accordance with section 737B(4)."

123 Manufactured payments.

(1) In section 715 of the Taxes Act 1988 (exceptions from provisions about deemed sums and reliefs under the accrued income scheme) in subsection (6) (exceptions in certain cases where section 737 has effect) after "section 737" there shall be inserted " or paragraph 3 or 4 of Schedule 23A ".

F22(2) . . . . . .

F22(3) . . . . . .

F22(4) . . . . . .

F22(5) . . . . . .

(6) Subsection (1) above shall apply where any of the contracts mentioned in section 715(6) of the Taxes Act 1988 is made on or after 30th November 1993.

F22(7) . . . . . .

Textual Amendments

F22 S. 123(2)-(5)(7) repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. VI(10)**; S.I. 1997/991, **art. 2**

F23124 . . . . . .

Textual Amendments

F23 S. 124 repealed (29.4.1996) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(21)** Note 2

PAYE

125 Payment by intermediary.

After section 203A of the Taxes Act 1988 there shall be inserted—

"**203B PAYE: payment by intermediary.**

(1) Subject to subsection (2) below, where any payment of, or on account of, assessable income of an employee is made by an intermediary of the employer, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount determined in accordance with subsection (3) below.

(2) Subsection (1) above does not apply if the intermediary (whether or not he is a person to whom section 203 and PAYE regulations apply) deducts income tax from the payment he makes and accounts for it in accordance with PAYE regulations.

(3) The amount referred to is—

(a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and

(b) in any other case, the amount of the payment made by the intermediary.

(4) For the purposes of this section, a payment of, or on account of, assessable income of an employee is made by an intermediary of the employer if it is made—

(a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with him; or

(b) by trustees holding property for any persons who include or class of persons which includes the employee.

(5) Section 839 applies for the purposes of subsection (4) above."

126 Employees working for persons other than their employers, etc.

(1) After section 203B of the Taxes Act 1988 (which is inserted by section 125 above) there shall be inserted—

"**203C PAYE: employee of non-UK employer.**

(1) This subsection applies where—

(a) an employee during any period works for a person ("the relevant person") who is not his employer;

(b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer;

(c) PAYE regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and

(d) income tax is not deducted or accounted for in accordance with the regulations by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.

(2) Where subsection (1) above applies, the relevant person shall be treated, for the purposes of PAYE regulations, as making a payment of the assessable

income of the employee of an amount equal to the amount determined in accordance with subsection (3) below.

(3) The amount referred to is—

(a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and

(b) in any other case, the amount of the payment actually made.

(4) In this section and sections 203D and 203E "work", in relation to an employee, means the performance of any duties of the office or employment of the employee and any reference to his working shall be construed accordingly.

(5) Subsections (4) and (5) of section 203B apply for the purposes of this section as they apply for the purposes of that section.

203D PAYE: employee non-resident, etc.

(1) This section applies in relation to an employee in a year of assessment only if—

(a) he is not resident or, if resident, not ordinarily resident in the United Kingdom; and

(b) he works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.

(2) Where in relation to any year of assessment it appears to an officer of the Board that—

(a) some of the income of an employee to whom this section applies is assessable to income tax under Case II of Schedule E, but

(b) an as yet unascertainable proportion of the income may prove not to be assessable,

the officer may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

(3) In this section "the appropriate person" means—

(a) the person designated by the employer for the purposes of this section; or

(b) if no person is so designated, the employer.

(4) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.

(5) A direction under subsection (2) above—

(a) shall specify the employee to whom and the year of assessment to which it relates;

(b) shall be given by notice to the appropriate person; and

(c) may be withdrawn by notice to the appropriate person from a date specified in the notice.

(6) The date so specified may not be earlier than thirty days from the date on which the notice of the withdrawal is given.

(7) Where—

(a) a direction under subsection (2) above has effect in relation to an employee to whom this section applies, and

(b) a payment of, or on account of, the income of the employee is made in the year of assessment to which the direction relates,

the proportion of the payment determined in accordance with the direction shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

(8) Where in any year of assessment—

(a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies, and

(b) any payment is made of, or on account of, the income of the employee,

the entire payment shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

(9) Subsections (7) and (8) above are without prejudice to—

(a) any assessment in respect of the income of the employee in question; and

(b) any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.

203E PAYE: mobile UK workforce.

(1) This subsection applies where it appears to the Board that—

(a) a person ("the relevant person") has entered into or is likely to enter into an agreement that employees of another person ("the contractor") shall in any period work for, but not as employees of, the relevant person;

(b) payments of, or on account of, assessable income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor; and

(c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted or accounted for in accordance with the regulations.

(2) Where subsection (1) above applies, the Board may give a direction that, if—

(a) any employees of the contractor work in any period for, but not as employees of, the relevant person, and

(b) any payment is made by the relevant person in respect of work done by the employees in that period,

income tax shall be deducted in accordance with the provisions of this section by the relevant person on making that payment.

(3) A direction under subsection (2) above—

(a) shall specify the relevant person and the contractor to whom it relates;

(b) shall be given by notice to the relevant person; and

(c) may at any time be withdrawn by notice to the relevant person.

(4) The Board shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any notice given under subsection (3) above which relates to him.

(5) Where—

(a) a direction under subsection (2) above has effect, and

(b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,

income tax shall, subject to and in accordance with PAYE regulations, be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of assessable income of that employee."

127 Tradeable assets.

After section 203E of the Taxes Act 1988 (which is inserted by section 126 above) there shall be inserted—

"**203F PAYE: tradeable assets.**

(1) Where any assessable income of an employee is provided in the form of a tradeable asset, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount specified in subsection (3) below.

(2) For the purposes of subsection (1) above "tradeable asset" means—

(a) any asset capable of being sold or otherwise realised on a recognised investment exchange (within the meaning of the Financial Services Act 1986) or the London Bullion Market;

(b) any asset capable of being sold or otherwise realised on any market for the time being specified in PAYE regulations; and

(c) any other asset for which, at the time when the asset is provided, trading arrangements exist.

(3) The amount referred to is—

(a) in the case of an asset falling within subsection (2)(a) or (b) above, the amount for which it is capable of being sold or the amount for which it can be realised on the exchange or market in question; and

(b) in the case of an asset for which trading arrangements exist at the time when the asset is provided, the amount which is obtained under those arrangements.

(4) For the purposes of subsection (2) above, "asset" does not include—

(a) any payment actually made of, or on account of, assessable income;

(b) any non-cash voucher, credit-token or cash voucher (as defined in sections 141 to 143); or

(c) any description of property for the time being excluded from the scope of this section by PAYE regulations.

(5) Subject to subsection (4) above, for the purposes of subsection (2) above "asset" includes any property and in particular any right or interest falling within any paragraph in Part I of Schedule 1 to the Financial Services Act 1986."

128 Non-cash vouchers.

After section 203F of the Taxes Act 1988 (which is inserted by section 127 above) there shall be inserted—

"**203G PAYE: non-cash vouchers.**

(1) Where a non-cash voucher to which this section applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 141(1)(a).

(2) This section applies to a non-cash voucher to which section 141(1) applies if—
  (a) either of the two conditions set out below is fulfilled with respect to the voucher; and
  (b) the voucher is not of a description for the time being excluded from the scope of this section by PAYE regulations.

(3) The first condition is fulfilled with respect to a voucher if it is capable of being exchanged for goods—
  (a) which, at the time when the voucher is provided, are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  (b) for which, at the time when the voucher is provided, trading arrangements exist.

(4) The second condition is fulfilled with respect to a voucher if, at the time when the voucher is provided, the voucher itself—
  (a) is capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  (b) is a voucher for which trading arrangements exist."

129 Credit-tokens.

After section 203G of the Taxes Act 1988 (which is inserted by section 128 above) there shall be inserted—

"**203H PAYE: credit-tokens.**

(1) Subject to subsection (3) below, on each occasion on which an employee uses a credit-token provided to him by reason of his employment to obtain—
  (a) money, or
  (b) goods falling within subsection (2) below,

the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 142(1)(a).

(2) Goods fall within this subsection if, at the time when they are obtained, they are goods—
  (a) which are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  (b) for which trading arrangements exist.

(3) PAYE regulations may make provision for excluding from the scope of this section any description of use of a credit-token.

(4) In this section "credit-token" has the same meaning as in section 142."

130 Cash vouchers.

After section 203H of the Taxes Act 1988 (which is inserted by section 129 above) there shall be inserted—

"**203I PAYE: cash vouchers.**

(1) Subject to subsection (2) below, where a cash voucher to which section 143(1) applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 143(1)(a).

(2) PAYE regulations may make provision for excluding from the scope of this section the provision of cash vouchers in such description of circumstances as may be specified in the regulations."

131 Supplementary.

After section 203I of the Taxes Act 1988 (which is inserted by section 130 above) there shall be inserted—

"**203J S.203B to s.203I: accounting for tax.**

(1) Where an employer makes a notional payment of assessable income of an employee, the obligation to deduct income tax shall have effect as an obligation on the employer to deduct income tax at such time as may be prescribed by PAYE regulations from any payment or payments he actually makes of, or on account of, such income of that employee.

(2) For the purposes of this section—

(a) a notional payment is a payment treated as made by virtue of any of sections 203B, 203C and 203F to 203I, other than a payment whose amount is determined in accordance with section 203B(3)(a) or 203C(3)(a); and

(b) any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).

(3) Where, by reason of an insufficiency of payments actually made, the employer is unable to deduct the amount (or the full amount) of the income tax as required by virtue of subsection (1) above, the obligation to deduct income tax shall have effect as an obligation on the employer to account to the Board at such time as may be prescribed by PAYE regulations for an amount of income tax equal to the amount of income tax he is required, but is unable, to deduct.

(4) PAYE regulations may make provision—

(a) with respect to the time when any notional payment (or description of notional payment) is made;

(b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts accounted for in respect of any notional payments;

(c) with respect to the collection and recovery of amounts accounted for in respect of notional payments.

(5) Any amount which an employer deducts or for which he accounts as mentioned in subsections (1) and (3) above shall be treated as an amount paid by the employee in question in respect of his liability to income tax for such year of assessment as may be specified in PAYE regulations.

203K Trading arrangements.

(1) "Trading arrangements" in sections 203F to 203H shall be construed in accordance with this section.

(2) Trading arrangements—

(a) for an asset, are arrangements for the purpose of enabling the person to whom the asset is provided to obtain an amount similar to the expense incurred in the provision of the asset;

(b) for goods for which a non-cash voucher is capable of being exchanged, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred in the provision of the goods;

(c) for a non-cash voucher, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred as mentioned in section 141(1)(a);

(d) for goods obtained by the use of a credit-token, are arrangements for the purpose of enabling the person to whom the credit-token is provided to obtain an amount similar to the expense incurred in the provision of the goods.

(3) For the purposes of subsection (2) above—

(a) any reference to enabling a person to obtain an amount includes—

(i) a reference to enabling a class or description of persons which includes that person to obtain the amount; and

(ii) a reference to enabling an amount to be obtained by any means, including in particular by using an asset or goods as security for a loan or an advance; and

(b) an amount is similar to an expense incurred if it is greater than, equal to or not substantially less than that expense.

(4) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of sections 203F to 203H.

203L S.203B to s.203K: interpretation, etc.

(1) In sections 203B to 203J "employee" means a person holding an office or employment under or with any other person, and (subject to section 203J(2)(b)) any reference to the employer is a reference to that other person.

(2) In sections 203B to 203J "assessable" means assessable to income tax under Schedule E.

(3) In sections 203B to 203K and this section "PAYE regulations" means regulations under section 203.

(4) PAYE regulations made by virtue of any of sections 203B to 203K may—

(a) make different provision for different classes of case;

(b) contain such incidental, consequential and supplementary provision as appears to the Board to be expedient."

132 Payments etc. received free of tax.

After section 144 of the Taxes Act 1988 there shall be inserted—

"**144A Payments etc. received free of tax.**

(1) In any case where—

(a) an employer is treated, by virtue of any of sections 203B to 203I, as having made a payment of income of an employee which is assessable to income tax under Schedule E,

(b) the employer is required, by virtue of section 203J(3), to account for an amount of income tax ("the due amount") in respect of that payment, and

(c) the employee does not, before the end of the period of thirty days from the date on which the employer is treated as making that payment, make good the due amount to the employer,

the due amount shall be treated as income of the employee which arises on the date mentioned in paragraph (c) above and is assessable to income tax under Schedule E.

(2) In this section any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2)."

133 PAYE regulations: past cases.

(1) Regulation 4 of the 1993 Regulations (intermediate employers) is hereby revoked; but in relation to any time before its revocation it shall be deemed to have been validly made.

(2) Regulation 3 of the 1973 Regulations (intermediate employers) shall, in relation to any time before its revocation, be deemed to have been validly made.

(3) Where, at any time before the passing of this Act—

(a) a payment has been made of, or on account of, any income of an employee not resident or, if resident, not ordinarily resident in the United Kingdom,

(b) at the time when the payment was made it appeared that some of the income would be assessable to income tax under Case II of Schedule E, but that some of the income might prove not to be assessable to income tax under that Schedule, and

(c) the payment or any proportion of it was treated for the purposes of the 1993 Regulations or the 1973 Regulations as a payment to which the regulations applied,

then the treatment of that payment or that proportion of the payment as being a payment to which the regulations applied shall be deemed to have been lawful.

(4) In this section—

(a) "employee" means a person holding an office or employment under or with any other person;

(b) "the 1993 Regulations" means the [M15]Income Tax (Employments) Regulations 1993; and

(c) "the 1973 Regulations" means the [M16]Income Tax (Employments) Regulations 1973.

Marginal Citations

M15 S.I. 1993/774.

M16 S.I. 1973/334.

Miscellaneous provisions about companies

134 Controlled foreign companies.

(1) In Schedule 25 to the Taxes Act 1988, Part I (acceptable distribution policy) shall be amended as follows.

(2) In paragraph 2 (acceptable distribution policies for both trading and non-trading companies)—

(a) in sub-paragraph (1)—

(i) for "sub-paragraph (2)" there is substituted " paragraph 2A ",

(ii) in paragraph (a), "or for some other period which, in whole or in part, falls within that accounting period" is omitted,

(iii) in paragraph (b), for "the period for which it is paid" there is substituted " that period ",

(iv) in paragraph (d) for "proportion" there is substituted " amount " and for "represents at least" there is substituted " is not less than ", and

(v) the words following paragraph (d) are omitted,

(b) sub-paragraph (2) is omitted, and

(c) for sub-paragraph (3) there is substituted—

"(3) For the purposes of this paragraph and paragraph 2A below, a dividend which is not paid for the period or periods the profits of which are, in relation to the dividend, the relevant profits for the purposes of section 799 shall be treated (subject to sub-paragraph (3A) below) as so paid.

(3A) For the purposes of this paragraph and paragraph 2A below—

(a) where a dividend is paid for a period which is not an accounting period but falls wholly within an accounting

period, it shall be treated as paid for that accounting period, and

(b) where a dividend ("the actual dividend") is paid for a period which falls within two or more accounting periods—

(i) it shall be treated as if it were a number of separate dividends each of which is paid for so much of the period as falls wholly within an accounting period, and

(ii) the nece contract as regardsssary apportionment of the amount of the actual dividend shall be made to determine the amount of the separate dividends."

(3) After that paragraph there is inserted—

"2A (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company which is not a trading company pursues an acceptable distribution policy in respect of a particular accounting period ("the relevant accounting period").

(2) Subject to sub-paragraph (4) below, where the distribution condition is satisfied in relation to the relevant accounting period, then, in addition to any dividend which falls within paragraph 2(1)(a) above apart from this paragraph—

(a) any dividend which is paid for the accounting period ("the preceding period") which immediately precedes the relevant accounting period and is not an excluded period shall be treated as falling within that paragraph, and

(b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period which immediately precedes the preceding period and is not an excluded period shall be treated as falling within that paragraph,

and so on; and in this sub-paragraph "dividend" means a dividend not paid out of specified profits.

(3) For the purposes of this paragraph, the distribution condition is satisfied in relation to any accounting period if—

(a) a dividend or dividends are paid for the period to persons resident in the United Kingdom,

(b) the amount or, as the case may be, aggregate amount of any dividends falling within paragraph (a) above is not less than—

(i) the relevant profits for that period, or

(ii) where paragraph 2(4) or (5) above applies (with the modifications of paragraph 2 made by sub-paragraph (5) below), the appropriate portion of those profits, and

(c) any dividends falling within that paragraph are paid not later than the time by which any dividend paid for the relevant accounting period is required by paragraph 2(1)(b) above to be paid;

or if there are no relevant profits for the period.

(4) Where, by reason only of the fact that a company pursued an acceptable distribution policy in respect of any accounting period ("the earlier period")

earlier than the relevant accounting period, no direction could be given in respect of the earlier period under section 747(1), sub-paragraph (2) above shall apply to any dividend required to be taken into account for the purpose of showing that the company pursued an acceptable distribution policy in respect of the earlier period only to the extent (if any) to which that dividend was not required to be taken into account for that purpose.

(5) The modifications of paragraph 2 above referred to in sub-paragraph (3)(b) above are that—

(a) the references in sub-paragraphs (4) and (5) to the accounting period in question are to be read as references to the accounting period for which the dividend or dividends are paid,

(b) the references in those sub-paragraphs to sub-paragraph (1)(d) are to be read as references to sub-paragraph (3)(b) above, and

(c) the reference in the definition of "X" in sub-paragraph (6) to available profits is to be read as a reference to relevant profits.

(6) Paragraph 2(1)(d) above shall have effect as if for "50 per cent. of the company's available profits" there were substituted "90 per cent. of the company's net chargeable profits".

(7) In paragraph 2(6) above, the definition of "X" shall have effect as if the reference to available profits were a reference to net chargeable profits.

(8) For the purposes of this paragraph—

(a) a period is an excluded period if it is an accounting period in respect of which a direction is given under section 747(1), and

(b) relevant profits for any accounting period are the profits which would be the relevant profits of that period for the purposes of section 799 if a dividend were actually paid for that period."

(4) In paragraph 3 of that Schedule (available profits)—

(a) after sub-paragraph (4) there is inserted—

"(4A) Subject to sub-paragraph (5) below, for the purposes of this Part of this Schedule, the net chargeable profits of a controlled foreign company for any accounting period are—

(a) its chargeable profits for that period, less

(b) the amount (if any) which, if a direction were given under section 747(1) in respect of the period, would be the company's unrestricted creditable tax for that period;

and for the purposes of this sub-paragraph "unrestricted creditable tax" in relation to a company's accounting period means the amount which would be its creditable tax for that period if the reference in section 751(6)(a) to Part XVIII did not include section 797", and

(b) in sub-paragraph (5), after "available profits" there is inserted " or, where the company is not a trading company, the chargeable profits ".

(5) This section shall apply to determine whether a controlled foreign company pursues an acceptable distribution policy in respect of accounting periods ending on or after 30th November 1993.

135 Prevention of avoidance of corporation tax.

(1) In the Taxes Act 1988, immediately before section 768 there shall be inserted—

"767A **Change in company ownership: corporation tax.**

(1) Where it appears to the Board that—

(a) there has been a change in the ownership of a company ("the tax-payer company"),

(b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and

(c) any of the three conditions mentioned below is fulfilled,

any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.

(2) The persons are—

(a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;

(b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.

(3) In subsection (2) above, "the relevant period" means—

(a) the period of three years before the change in the ownership of the tax-payer company; or

(b) if during the period of three years before that change ("the later change") there was a change in the ownership of the tax-payer company ("the earlier change"), the period elapsing between the earlier change and the later change.

(4) The first condition is that—

(a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and

(b) there is no significant revival of those activities before that change occurs.

(5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.

(6) The third condition is that—

(a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;

(b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or

any assets representing those assets to be transferred to a person mentioned in subsection (7) below;

(c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and

(d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.

(7) The persons are—

(a) any person mentioned in subsection (2)(a) above; and

(b) any person connected with him.

(8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.

(9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.

(10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

767B **Change of company ownership: supplementary.**

(1) In relation to corporation tax assessed under section 767A—

(a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and

(b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),

shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.

(2) A payment in pursuance of an assessment under section 767A shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company.

(3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).

(4) For the purposes of section 767A, "control", in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.

(5) In subsection (2)(a) for "the greater part of" there shall be substituted "50 per cent. of".

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

(") Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company."

(7) In section 767A(6) "a major change in the nature or conduct of a trade or business" includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.

(8) In section 767A(6) "transfer", in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.

(9) Section 839 shall apply for the purposes of section 767A(7).

(10) Subsection (9) of section 768 shall apply for the purposes of section 767A as it applies for the purposes of section 768."

(2) Section 769 (rules for ascertaining change of ownership of company) shall be amended as follows.

(3) In subsections (1), (2) and (5) for the words "sections 768", in each place where they occur, there shall be substituted " sections 767A, 768 ".

(4) After subsection (2) there shall be inserted—

"(2A) Where—

(a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and

(b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,

then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital."

(5) After subsection (8) there shall be inserted—

"(9) Subsection (8) above shall not apply in relation to section 767A."

(6) The amendments made by this section shall have effect in relation to any change in ownership occurring on or after 30th November 1993 other than a change occurring in pursuance of a contract entered into before that day.

136 Parts of trades: computations in different currencies.

(1) The following section shall be inserted after section 94 of the [M17]Finance Act 1993 (computations in different currencies for different parts of trades)—

"**94A Parts of trades: petroleum extraction companies.**

(1) If a trade carried on by a petroleum extraction company is a ring fence trade—

(a) subsection (1) of section 94 above shall not apply as regards the trade, but

(b) regulations may make provision under that section as regards a case where in an accounting period the company carries on the trade and the condition mentioned in subsection (2) below is fulfilled.

(2) The condition is that—

(a) part of the trade consists of activities which relate to oil and are carried on under the authority of a petroleum licence in the United Kingdom or a designated area, and

(b) part of the trade consists of activities which relate to gas and are carried on under the authority of a petroleum licence in the United Kingdom or a designated area.

(3) For the purposes of this section—

(a) a petroleum licence is a licence granted under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964;

(b) a petroleum extraction company is a company which carries on activities under the authority of such a licence;

(c) a designated area is an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.

(4) For the purposes of this section "ring fence trade" means activities which—

(a) fall within any of paragraphs (a) to (c) of subsection (1) of section 492 of the Taxes Act 1988 (oil extraction etc.), and

(b) constitute a separate trade (whether by virtue of that subsection or otherwise).

(5) For the purposes of this section—

(a) "oil" means such substance as falls within the meaning of oil contained in section 502(1) of the Taxes Act 1988 and is not gas;

(b) "gas" means such substance as falls within the meaning of oil contained in section 502(1) of the Taxes Act 1988 and is gas of which the largest component by volume, measured at a temperature of 15 degrees centigrade and a pressure of one atmosphere, is methane or ethane or a combination of those gases."

(2) In section 95(6) of the [M18]Finance Act 1993 (commencement of provisions about currency to be used for computations) for "94" there shall be substituted " 94A ".

Marginal Citations

M17 1993 c.34.

M18 1993 c. 34.

Miscellaneous

137 Enterprise investment scheme.

(1) Schedule 15 to this Act shall have effect to revive Chapter III of Part VII of the Taxes Act 1988 (relief for investment in corporate trades) in relation to shares issued on or after 1st January 1994.

(2) That Chapter shall have effect in relation to such shares with the amendments made by that Schedule; and, in relation to such shares, that Chapter as so amended shall apply for the year 1993-94 and subsequent years of assessment.

(3) The [M19]Taxation of Chargeable Gains Act 1992 shall have effect with the amendments made by that Schedule.

Marginal Citations
M19 1992 c. 12.

138 Foreign income dividends.

Schedule 16 to this Act (which contains provisions about foreign income dividends) shall have effect.

139 Taxation of incapacity benefit.

(1) For the year 1995-96 and subsequent years of assessment incapacity benefit, except—

(a) benefit payable for an initial period of incapacity, and

(b) so much of any benefit as is attributable in any case to an increase in respect of a child,

shall be treated as income for the purposes of the Income Tax Acts and charged to income tax under Schedule E.

(2) Subsection (1) above shall not apply to incapacity benefit to which a person is entitled for any day of incapacity for work falling in a period of incapacity for work which is treated for the purposes of that benefit as having begun before 13th April 1995 if the part of that period which is treated as having fallen before that date includes a day for which that person was entitled to invalidity benefit.

(3) Incapacity benefit shall for the purposes of this section be a benefit in relation to which section 41 of the [M20]Finance Act 1989 (year of assessment in which benefit to be charged) applies.

(4) Enactments relating to the payment of incapacity benefit shall have effect subject to such provision as may be contained for the purposes of this section in regulations under section 203 of the Taxes Act 1988 (PAYE regulations).

(5) In this section—

"incapacity benefit" means any benefit which by virtue of provisions contained in the Social Security (Incapacity for Work) Act 1994 or any

corresponding provisions made for Northern Ireland is to be known as incapacity benefit;

[[F24]"initial period of incapacity", in relation to incapacity benefit, means any period for which short-term incapacity benefit is payable otherwise than at the higher rate; and**]**

"invalidity benefit" means invalidity benefit under Part II of the [M21]Social Security Contributions and Benefits Act 1992 or under Part II of the [M22]Social Security Contributions and Benefits (Northern Ireland) Act 1992.

[[F25](6) The reference in subsection (5) above to short-term incapacity benefit payable at the higher rate shall be construed in accordance with sections 30B(5), 40(8) and 41(7) of the [M23]Social Security Contributions and Benefits Act 1992 and the corresponding provisions of the [M24]Social Security Contributions and Benefits (Northern Ireland) Act 1992.**]**

Textual Amendments

F24 S. 139(5): Definition of "initial period of incapacity" substituted (*retrospectively*) by 1995 c. 4, **s. 141(2)**

F25 S. 139(6) inserted (*retrospectively*) by 1995 c. 4, **s. 141(3)**

Marginal Citations

M20 1989 c. 26.

M21 1992 c. 4.

M22 1992 c. 7.

M23 1992 c. 4.

M24 1992 c. 7.

140 Restriction on deduction from income.

(1) Section 808 of the Taxes Act 1988 (restriction on deduction of interest or dividends from trading income) shall be amended as follows—

(a) for "a banking business, an insurance business or a business consisting wholly or partly in dealing in securities" there shall be substituted " a business ";

(b) for "or dividend" there shall be substituted " , dividend or royalties ";

(c) the words "In this section "securities" includes stocks and shares" shall be omitted.

(2) This section shall apply where it is sought to exclude receipts from income or profits of an accounting period beginning on or after 30th November 1993.

141 Expenditure involving crime.

(1) Section 577A of the Taxes Act 1988 (certain expenditure involving crime not to be deducted and not to be included in expenses of management) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

"(1A) In computing profits or gains chargeable to tax under Schedule A or Schedule D, no deduction shall be made for any expenditure incurred in making a payment induced by a demand constituting—

(a) the commission in England or Wales of the offence of blackmail under section 21 of the Theft Act 1968,

(b) the commission in Northern Ireland of the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969, or

(c) the commission in Scotland of the offence of extortion."

(3) In subsection (2) for "Such expenditure" there shall be substituted " Any expenditure mentioned in subsection (1) or (1A) above ".

(4) This section shall apply in relation to expenditure incurred on or after 30th November 1993.

142 Mortgage interest payable under deduction of tax: qualifying lenders.

F26(1) . . . . . .

(2) The following section shall be inserted in the Taxes Act 1988 after section 376—

"**376A The register of qualifying lenders.**

(1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).

(2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.

(3) The registration of any body may be varied by the Board—

(a) where it is general, by providing for it to be in relation to a specified description of loan, or

(b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,

and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.

(4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.

(5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.

(6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board's decision, require the matter to be determined by the Special Commissioners; and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal."

(3) Any body which is, immediately before the date on which this Act is passed, a prescribed body for the purposes of section 376 of the Taxes Act 1988 (by virtue of an order made under subsection (5) of that section) shall be entitled to be entered in the register maintained under section 376A of that Act as a qualifying lender except that if it was, immediately before that date, a qualifying lender only in relation to such description of loan as was specified in the order, it shall be entitled to be entered in the register as a qualifying lender only in relation to that description of loan.

(4) Until such time as the Board enter any such body in the register, that body shall be deemed to have been registered in accordance with its entitlement.

Textual Amendments

F26 S. 142(1) repealed (1.12.2001) by S.I. 2001/3629, arts. 1(2)(a), 109, **Sch.**

F27 143 . . . . . .

Textual Amendments

F27 S. 143 repealed (1.5.1995 with effect as mentioned in Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(5)**, Note 2 (with Sch. 8 paras. 55(2), 57(1))

144 Debts released in voluntary arrangement: relief from tax.

(1) In the Taxes Act 1988, in section 74 (general rules as to deductions not allowable), for paragraph (j) (debts not allowable except in certain circumstances) there shall be substituted—

"(j) any debts except—

(i) a bad debt proved to be such;

(ii) a debt or part of a debt released by the creditor wholly and exclusively for the purposes of his trade, profession or vocation as part of a relevant arrangement or compromise; and

(iii) a doubtful debt to the extent estimated to be bad, meaning, in the case of the bankruptcy or insolvency of the debtor, the debt except to the extent that any amount may reasonably be expected to be received on the debt;".

(2) The provisions of that section shall become subsection (1) of that section and after that subsection there shall be inserted—

"(2) In paragraph (j) of subsection (1) above "relevant arrangement or compromise" means—

(a) a voluntary arrangement which has taken effect under or by virtue of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989; or

(b) a compromise or arrangement which has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986."

(3) In the Taxes Act 1988—

(a) in section 94 (debts deducted and subsequently released) after the word "released" where it first occurs, and

(b) in section 103(4)(b) (debts deducted before, but released after, discontinuance of trade, etc.) after the word "released",

there shall be inserted " otherwise than as part of a relevant arrangement or compromise ".

(4) The provisions of section 94 of the Taxes Act 1988 shall become subsection (1) of that section and after that subsection there shall be inserted—

"(2) In subsection (1) above "relevant arrangement or compromise" has the same meaning as in section 74."

(5) After section 103(4) of the Taxes Act 1988 there shall be inserted—

"(4A) In subsection (4)(b) above "relevant arrangement or compromise" has the same meaning as in section 74."

(6) Subsection (1) above shall have effect, for the purposes of determining (in computing the amount of profits or gains to be charged under Case I or Case II of Schedule D) whether any sum should be deducted in respect of any debt, in relation to debts—

(a) proved to be bad,

(b) released as part of—

(i) a voluntary arrangement which has taken effect under or by virtue of the [M25]Insolvency Act 1986 or the [M26]Insolvency (Northern Ireland) Order 1989, or,

(ii) a compromise or arrangement which has taken effect under section 425 of the [M27]Companies Act 1985 or Article 418 of the [M28]Companies (Northern Ireland) Order 1986, and

(c) estimated to be bad,

if the proof, release or estimation occurs on or after 30th November 1993.

(7) Subsection (3) above shall have effect in relation to the release on or after 30th November 1993 of the whole or any part of any debt.

Marginal Citations

M25 1986 c. 45.

M26 S.I. 1989/2405 (N.I. 19).

M27 1985 c. 6.

M28 S.I. 1986/1032 (N.I. 6).

145 Relief for business donations.

[F28](1) . . . . . .

(2) Section 79A of that Act shall be amended as follows.

(3) In subsection (1), after "training and enterprise council" there shall be inserted " business link organisation " and in subsection (3) after "council" there shall be inserted " organisation ".

(4) In subsection (5), before paragraph (a) there shall be inserted—

"(aa) "business link organisation" means any person authorised by or on behalf of the Secretary of State to use a service mark (within the meaning of the Trade Marks (Amendment) Act 1984) designated by the Secretary of State for the purposes of this paragraph".

(5) In subsection (7), after "1st April 1990" there shall be inserted " or, in the case of a contribution to a business link organisation, 30th November 1993 ".

Textual Amendments

F28 S. 145(1) repealed (28.7.2000) by 2000 c. 17, s. 156, **Sch. 40 Pt. II(9)**

146 Minor corrections.

Schedule 17 to this Act (which corrects various mistakes made in or introduced into the Taxes Act 1988) shall have effect.

CHAPTER II

INTEREST RATE AND CURRENCY CONTRACTS

Modifications etc. (not altering text)

C1 Pt. IV Chapter II (ss. 147-177) restricted (31.7.1998) by 1988 c. 1, **Sch. 28AA para. 8(1)(b)** (as inserted (31.7.1998) by 1998 c. 36, s. 108, **Sch. 16**)

C2 Pt. IV Chapter II (ss. 147-177) applied (29.4.1996 with effect as mentioned in s. 105(1) of the applying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(4)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

C3 Pt. IV Chapter II (ss. 147-177) modified (29.4.1996 with effect as mentioned in s. 105(1) of the modifying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

C4 Pt. IV Chapter II (ss. 147-177) excluded (29.4.1996 with effect as mentioned in s. 105(1) of the excluding Act) by 1996 c. 8, **s. 101(1)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

Qualifying contracts

147 Qualifying contracts.

(1) For the purposes of this Chapter—

(a) an interest rate contract or option, or

(b) a currency contract or option,

is a qualifying contract as regards a qualifying company if the company becomes entitled to rights or subject to duties under the contract or option on or after its commencement day.

(2) Where both immediately before and at the beginning of its commencement day—

(a) a company to which this paragraph applies is entitled to rights or subject to duties under an interest rate contract or option, or

(b) a qualifying company is entitled to rights or subject to duties under a currency contract or option,

for the purposes of this Chapter the company shall be treated as becoming entitled or subject to them at the beginning of that day.

(3) A qualifying company is a company to which paragraph (a) of subsection (2) above applies if its commencement day falls outside the period of twelve months beginning with the appointed day.

(4) For the purposes of this Chapter—

(a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day; and

(b) the appointed day is such day as the Treasury may by order appoint.

Subordinate Legislation Made

P2 S. 147(4)(b) power exercised: 23.3.1995 appointed by S.I. 1994/3225, **art. 2**

[F29 147A Debt contracts and options to be qualifying contracts.

(1) For the purposes of this Chapter a debt contract or option is a qualifying contract as regards a qualifying company if the company becomes entitled to rights, or subject to duties, under the contract or option at any time on or after 1st April 1996.

(2) For the purposes of this Chapter a qualifying company which is entitled to rights, or subject to duties, under a debt contract or option both immediately before and on 1st April 1996 shall be deemed to have become entitled or subject to those rights or duties on that date.

(3) This section has effect subject to paragraph 25 of Schedule 15 to the Finance Act 1996 (transitional provisions).**]**

Textual Amendments

F29 S. 147A inserted (29.4.1996 with effect as mentioned in s. 105(1) of the inserting Act) by 1996 c. 8, **s. 101(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

148 Contracts which may become qualifying contracts.

(1) A qualifying company is a company to which this section applies if its commencement day falls within the period of twelve months beginning with the appointed day.

(2) Subject to subsection (3) below, all quasi-qualifying contracts which, at the end of the period of six years beginning with its commencement day, are held by a company to which this section applies shall be treated for the purposes of this Chapter as if the company became entitled to rights or subject to duties under them on the first day of its first accounting period beginning after the end of the period of six years.

(3) Subject to subsection (5) below, if a company to which this section applies so elects, all quasi-qualifying contracts held by the company on its commencement day shall be treated for the purposes of this Chapter as if the company became entitled to rights or subject to duties under them on that day.

(4) An election by a company under subsection (3) above shall be irrevocable and shall be made by notice served on the inspector before the end of the period of three months beginning with its commencement day.

(5) A company may not make an election under subsection (3) above at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant day.

(6) An election under subsection (3) above by a company which is the principal company of a group shall have effect also as an election by any other company to which this section applies and which on the relevant day is a member of the group.

(7) Subsection (6) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant day except where—

(a) the company is an outgoing company in relation to the group, and

(b) the election relating to the group is made after the company ceases to be a member of the group.

(8) In this section—

"outgoing company", in relation to a group of companies, means a company which ceases to be a member of the group before the end of the period during which an election under subsection (3) above could be made in relation to it and at a time when no such election has been made;

"quasi-qualifying contract", in relation to a qualifying company, means an interest rate contract or option which would be a qualifying contract if the company became entitled to rights or subject to duties under it on or after the company's commencement day;

"the relevant day" means the principal company's commencement day.

(9) Section 170 of the [M29]Taxation of Chargeable Gains Act 1992 (groups of companies) shall have effect for the purposes of this section as for those of sections 171 to 181 of that Act.

Marginal Citations

M29 1992 c.12.

Interest rate and currency contracts and options

149 Interest rate contracts and options.

(1) A contract is an interest rate contract for the purposes of this Chapter if—

(a) the condition mentioned below is fulfilled, and

(b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3) or (4) or section 151 below.

(2) The condition is that under the contract, whether unconditionally or subject to conditions being fulfilled, a qualifying company becomes entitled to a right to receive, or becomes subject to a duty to make, at a time specified in the contract a variable rate payment.

(3) An interest rate contract may include provision under which, as the consideration or part of the consideration for a payment falling within subsection (2) above, the qualifying company becomes subject to a duty to make, or (as the case may be) becomes entitled to a right to receive, at a time specified in the contract a fixed or fixed rate payment.

(4) In so far as the rights and duties mentioned in subsections (2) and (3) above relate to two payments—

(a) which fall to be made at the same time, and

(b) of which one falls to be made to and the other by the qualifying company,

it is immaterial for the purposes of this section that those rights and duties may be exercised and discharged by a payment made to or, as the case may require, by the company of an amount equal to the difference between the amounts of those payments.

(5) Each of the following, namely—

(a) an option to enter into an interest rate contract, and

(b) an option to enter into such an option,

is an interest rate option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.

(6) In this section—

"fixed payment" means a payment of a fixed amount specified in the contract;

"fixed rate payment" means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at all times is the same as that of a fixed rate of interest so specified;

"variable rate payment" means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at any time is the same as that of a variable rate of interest so specified.

Modifications etc. (not altering text)

C5 S. 149(2) modified (1.1.1999) by S.I. 1998/3177, **reg. 8(a)**

150 Currency contracts and options.

(1) A contract is a currency contract for the purposes of this Chapter if—

(a) the condition mentioned below is fulfilled, and

(b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3), (4) or (9) or section 151 below.

(2) The condition is that under the contract a qualifying company—

(a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of one currency (the first currency), and

(b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of another currency (the second currency).

(3) A currency contract may include provision under which the qualifying company—

(a) becomes entitled to a right to receive at a time specified in the contract a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the first currency, and

(b) becomes subject to a duty to make at a time so specified a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the second currency.

(4) A currency contract may also include provision under which the qualifying company—

(a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of the second currency, and

(b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of the first currency.

(5) In subsections (3) and (4) above—

(a) any reference to a time is a reference to a time earlier than that specified in the contract for the purposes of subsection (2) above, and

(b) any reference to a specified rate of interest is a reference to a rate the value of which at any time is the same as that of the specified rate of interest.

(6) Each of the following, namely—

(a) an option to enter into a currency contract, and

(b) an option to enter into such an option,

is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.

(7) An option the exercise of which at any time would result in a qualifying company—

(a) becoming entitled to a right and subject to a duty to receive payment at that time of a specified amount of one currency, and

(b) becoming entitled to a right and subject to a duty to pay in exchange and at that time a specified amount of another currency,

is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within this subsection and section 151 below.

(8) Where, in the case of a contract which is subject to a condition precedent, the fulfilment of the condition at any time would result in a qualifying company becoming entitled and subject as mentioned in paragraphs (a) and (b) of subsection (7) above, that subsection and the following provisions of this Chapter shall have effect as if—

(a) the contract before the fulfilment of the condition were such an option as is mentioned in that subsection,

(b) the fulfilment of the condition were the exercise of the option, and

(c) the contract after the fulfilment of the condition were the contract resulting from the exercise of the option.

(9) It is immaterial for the purposes of this section that the rights and duties mentioned in subsection (2), (4) or (7) above may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in whatever currency) which, at the specified time or the time when the option is exercised, is equivalent in value to the difference between—

(a) the local currency equivalent at that time of one of the payments there mentioned, and

(b) the local currency equivalent at that time of the other of those payments.

(10) Subsection (9) above shall be read as applying equally to such of the rights and duties mentioned in subsection (3) above as fall to be exercised and discharged at the same time, and for that purpose shall have effect with such modifications as may be requisite.

[[F30](11) Subsection (12) below applies where—

(a) under a contract or as a result of the exercise of an option, a qualifying company becomes entitled to a right and subject to a duty to receive or make a payment at a specified time or at the time when the option is exercised, and

(b) the amount of the payment (in whatever currency) is computed in such a way as to be equal to the amount of the payment referred to in subsection (9) above which would have fallen to be computed if—

(i) the qualifying company had been entitled and subject as mentioned in subsection (2) or (7) above, and

(ii) a payment such as is referred to in subsection (9) were to be made to or by the qualifying company.

(12) For the purposes of this Chapter—

(a) the qualifying company shall be deemed to have become entitled and subject as mentioned in subsection (2) above under the contract referred to in subsection (11) above or, as the case may be, shall be deemed to have become entitled and subject as mentioned in subsection (7) above as a result of the exercise of the option referred to in subsection (11);

(b) the payment made under the contract or as a result of the exercise of the option shall be treated as if it were a payment falling within subsection (9) above in the exercise and discharge of the rights and duties to which the qualifying company is deemed to have become entitled and subject by virtue of paragraph (a) above.**]**

Textual Amendments

F30 S. 150(11)(12) inserted (23.3.1995) by S.I. 1994/3233, **art. 2**

Modifications etc. (not altering text)

C6 S. 150(3) modified (1.1.1999) by S.I. 1998/3177, **reg. 9(a)**

[F31150ADebt contracts and options.

(1) A contract is a debt contract for the purposes of this Chapter if, not being an interest rate contract or option or a currency contract or option—

(a) it is a contract under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become a party to a loan relationship; and

(b) the only transfers of money or money's worth for which the contract provides (apart from those that will be made under the loan relationship) are payments falling within subsection (5) below and payments falling within section 151 below.

(2) A contract is also a debt contract for the purposes of this Chapter if, not being a debt contract by virtue of subsection (1) above or an interest rate contract or option or a currency contract or option—

(a) it is a contract under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become treated as a person with rights and liabilities corresponding to those of a party to a loan relationship; and

(b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (6) below and payments falling within section 151 below.

(3) In this section references to an entitlement to become a party to a loan relationship, or to a duty to become such a party, shall be taken to include references, in relation to a specified loan relationship, to either of the following, namely—

(a) an entitlement or, as the case may be, a duty to become a party to an equivalent relationship; and

(b) an entitlement or, as the case may be, a duty relating to the making of any one or more such payments as fall within subsection (5) below.

(4) Subsection (3) above shall apply in relation to references in this section to an entitlement or a duty to become treated as a person with rights and liabilities corresponding to those of a party to a loan relationship as it applies to references to an entitlement or, as the case may be, a duty to become such a party.

(5) The payments falling within this subsection are—

(a) a payment of an amount representing the price for becoming a party to the relationship;

(b) a payment of an amount determined by reference to the value at any time of the money debt by reference to which the relationship subsists;

(c) a settlement payment of an amount determined by reference to the difference at specified times between—

(i) the price for becoming a party to the relationship; and

(ii) the value of the money debt by reference to which the relationship subsists, or (if the relationship were in existence) would subsist.

(6) A payment falls within this subsection if it is a settlement payment of an amount determined by reference to the difference at specified times between—

(a) the price for becoming treated as a person with rights and liabilities corresponding to those of a party to a relationship; and

(b) the value of the money debt by reference to which the relationship subsists or (if the relationship existed) would subsist.

(7) Each of the following, namely—

(a) an option to enter into a contract which would be a debt contract, and

(b) an option to enter into such an option,

is a debt option for the purposes of this Chapter if the only transfers of money or money's worth for which the option provides are payments falling within section 151 below.

(8) For the purposes of this Chapter where any contract contains both—

(a) provisions under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become a party to a loan relationship, and

(b) any provisions that have effect otherwise than for the purposes of or in relation to the provisions conferring that entitlement or imposing that duty,

the provisions mentioned in paragraph (a) above, together with the other contents of that contract so far as they are attributable on a just and reasonable basis to the provisions mentioned in that paragraph, shall be treated as a separate contract.

(9) For the purposes of this Chapter where—

(a) any attribution of the contents of a contract falls to be made between provisions falling within paragraph (a) of subsection (8) above and provisions falling within paragraph (b) of that subsection, and

(b) that contract provides for the making of any payment constituting a transfer of money or money's worth which cannot be attributed to the provisions falling within only one of those paragraphs,

that payment shall be treated as apportioned between the provisions falling within each of those paragraphs in such manner as may be just and reasonable.

(10) Expressions used in this section and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this section as in that Chapter; but references in this section to a loan relationship do not include—

(a) any loan relationship represented by an asset to which section 92 of that Act (convertible securities) applies; or

(b) any loan relationship to which section 93 of that Act (securities indexed to chargeable assets) applies.

(11) For the purposes of this section and, so far as it relates to a debt contract or option, of section 151 below the transfer of money's worth having a value of any amount shall be treated as the payment of that amount.**]**

Textual Amendments

F31 S. 150A inserted (29.4.1996 with effect as mentioned in s. 105(1) of the inserting Act) by 1996 c. 8, s. 101(3), **Sch. 12** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

Modifications etc. (not altering text)

C7 S. 150A modified (1.1.1999) by S.I. 1998/3177, **reg. 11(1)**

151 Provisions which may be included.

(1) An interest rate contract or option, **[**F32a currency contract or option or a debt contract or option**]**, may include provision under which the qualifying company—

(a) becomes entitled to a right to receive a payment in consideration of its entering into the contract or option, or

(b) becomes subject to a duty to make a payment in consideration of another person's entering into the contract or option.

(2) An interest rate contract or option, **[**F32a currency contract or option or a debt contract or option**]**, may also include provision for all or any of the following—

(a) a payment of a reasonable fee for arranging the contract or option;

(b) a payment of reasonable costs incurred in respect of the contract or option;

(c) a payment for securing, or made in consequence of, the variation or termination of the contract or option; and

(d) a payment by way of compensation for, or made in consequence of, a failure to comply with the contract or option.

Textual Amendments

F32 Words in s. 151(1)(2) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, **s. 101(4)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

152 Provisions which may be disregarded.

(1) Where—

(a) but for the inclusion in a contract or option of provisions for one or more transfers of money or money's worth, the contract or option would be a qualifying contract; and

(b) as regards the qualifying company and the relevant time, the present value of the transfer, or the aggregate of the present values of the transfers, is small when compared with the aggregate of the present values of all relevant payments,

the contract or option shall be treated for the purposes of section 149 or, as the case may be, section 150 **[**F33or 150A**]** above as if those provisions were not included in it.

(2) For the purposes of subsection (1) above—

(a) any present value of a relevant payment which is a negative value shall be treated as if it were the equivalent positive value; and

(b) any relevant payment the amount of which represents the difference between two other amounts shall be treated as if it were a payment of an amount equal to the aggregate of those amounts.

(3) In this section—

"relevant payments" means—

(a) in relation to a contract, qualifying payments under the contract;

(b) in relation to an option, qualifying payments under the option and payments which, if it were exercised, would be qualifying payments under the contract arising by virtue of its exercise;

"the relevant time" means the time when the contract or option was entered into or, if later, the time when the provisions were included in the contract or option.

Textual Amendments

F33 Words in s. 152(1) inserted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, **s. 101(5)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

Other basic definitions

153 Qualifying payments.

(1) Subject to subsections (2) to (5) below, in this Chapter "qualifying payment" means—

(a) in relation to a qualifying contract which is an interest rate contract, a payment falling within section 149(2), (3) or (4) above;

(b) in relation to a qualifying contract which is a currency contract, a payment falling within subsection (3) or (9) of section 150 above;

(c) in relation to a qualifying contract which is a currency option, a payment falling within subsection (9) of that section;

[F34(ca) in relation to a qualifying contract which is a debt contract, a payment falling within section 150A(5) or (6) above; and**]**

(d) in relation to any qualifying contract, a payment falling within section 151 above.

(2) In this Chapter "qualifying payment" includes, in relation to a qualifying contract—

(a) a payment which, if it were a payment under the contract, would be a payment falling within section 151 above; and

(b) a payment for securing the acquisition or disposal of the contract.

(3) Where a qualifying company closes out a qualifying contract which is an interest rate or currency contract by entering into another contract with obligations which are reciprocal to those of the qualifying contract—

(a) any payment received by the company in consideration of its entering into the reciprocal contract, or paid by the company in consideration of another person's entering into that contract, is for the purposes of this Chapter a qualifying payment in relation to the qualifying contract; and

(b) all other payments under the reciprocal contract, and all subsequent payments under the qualifying contract, shall be ignored for all purposes of the Tax Acts.

[F35(5) For the purposes of this Chapter, in the case of any qualifying contract which is a currency contract,—

(a) the amount of any forward discount arising under the contract to a qualifying company shall be treated as a qualifying payment received by the company; and

(b) the amount of any forward premium arising under the contract from a qualifying company shall be treated as a qualifying payment made by the company.

(6) The amounts of any forward discounts and premiums arising under a contract to a qualifying company shall be determined for the purposes of subsection (5) above—

(a) in accordance with subsections (7) to (9) below in the case of a currency contract which provides for a rate of exchange between the reporting currency and another currency, and

(b) in accordance with subsection (10) below in the case of a currency contract which provides for a rate of exchange between two currencies, neither of which is the reporting currency.

(7) For the purposes of subsection (5)(a) above, the cases where a forward discount arises under a currency contract to a company are those cases where—

(a) the acquisition spot price exceeds the acquisition contract price, or

(b) the sale contract price exceeds the sale spot price;

and the amount of the forward discount is the amount of the excess mentioned in paragraph (a) or (b) above, as the case may be.

(8) For the purposes of subsection (5)(b) above, the cases where a forward premium arises under a currency contract from a company are those cases where—

(a) the acquisition contract price exceeds the acquisition spot price, or

(b) the sale spot price exceeds the sale contract price;

and the amount of the forward premium is the amount of the excess mentioned in paragraph (a) or (b) above, as the case may be.

(9) In subsections (7) and (8) above—

"the acquisition contract price" means the amount of any currency (other than the reporting currency) to be acquired under the contract by the company, expressed in the reporting currency, using the rate of exchange determined by the terms of the contract;

"the acquisition spot price" means the amount of any currency (other than the reporting currency) to be acquired under the contract by the company, expressed in the reporting currency, using such rate of exchange for the date on which the company becomes entitled to rights and subject to duties under the contract as is used for the purposes of the company's accounts (as defined in section 156(6) below);

"the sale contract price" means the amount of any currency (other than the reporting currency) to be disposed of under the contract by the company, expressed in the reporting currency, using the rate of exchange determined by the terms of the contract;

"the sale spot price" means the amount of any currency (other than the reporting currency) to be disposed of under the contract by the company, expressed in the reporting currency, using such rate of exchange for the date on which the company becomes entitled to rights and subject to duties under the contract as is used for the purposes of the company's accounts (as defined in section 156(6) below).

(10) Where this subsection has effect in accordance with subsection (6)(b) above, the amounts of any forward premiums and discounts arising under the contract are the amounts which, in accordance with generally accepted accounting practice, are brought into account in the same way as any forward premiums and discounts which fall to be determined in accordance with subsections (7) and (8) above.

(11) Subsection (5) above is subject to subsection (12) below.

(12) Where a qualifying company is using, as respects a qualifying contract which is a currency contract, a basis of accounting which conforms to generally accepted accounting practice and—

(a) an amount which would, but for this subsection, fall to be treated as a qualifying payment by virtue of subsection (5) above is brought into account by the company, in accordance with that basis of accounting, as a qualifying payment made or received by the company but otherwise than by virtue of being a forward premium or discount, or

(b) that basis of accounting is such that no forward premiums or discounts are treated as arising under a qualifying contract,

subsection (5) above shall not have effect in relation to that amount or, as the case may be, in relation to that contract.

(13) In this section "the reporting currency" means sterling, unless the case is one where section 93 of the Finance Act 1993 (use of foreign currency) applies, in which case it means the currency which is the relevant foreign currency for the purposes of that section.**]**

Textual Amendments

F34 S. 153(1)(ca) and the word "and" immediately following it substituted for the word "and" at the end of para. (c) (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, **s. 101(6)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

F35 S. 153(5)-(13) substituted for s. 153(4)(5) (with effect as mentioned in s. 70(2) of the amending Act) by Finance Act 2002 (c. 23), **s. 70(1)**

154 Qualifying companies.

(1) Subject to subsections (2) and (3) below, any company is a qualifying company for the purposes of this Chapter.

(2) Where a unit trust scheme is an authorised unit trust as respects an accounting period the trustees (who are deemed to be a company for certain purposes by section 468(1) of the Taxes Act 1988) are not, as regards that period, a qualifying company for the purposes of this Chapter.

(3) A company which is approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period is not, as regards that period, a qualifying company for the purposes of this Chapter so far as it relates to currency contracts and options.

(4) In this section—

"authorised unit trust" has the same meaning as in section 468 of the Taxes Act 1988;

"unit trust scheme" has the same meaning as in section 469 of that Act.

Modifications etc. (not altering text)

C8 S. 154 modified (28.4.1997) by S.I. 1997/1154, **reg. 18**

Accrual of profits and losses

155 Accrual of profits and losses.

(1) Where, as regards a qualifying contract held by a qualifying company and an accounting period, amount A exceeds amount B, a profit on the contract of an amount equal to the excess accrues to the company for the period.

(2) Where, as regards a qualifying contract held by a qualifying company and an accounting period, amount B exceeds amount A, a loss on the contract of an amount equal to the excess accrues to the company for the period.

(3) Subsections (4) and (5) below have effect for the purposes of this section, sections 158 and 161 to 167 below and paragraph 2 of Schedule 18 to this Act; and any reference in any of those sections or that paragraph to amount A or amount B is a reference to that amount after the making of any adjustments under such of those sections as precede that section or paragraph.

(4) Where as regards a qualifying contract a qualifying company's profit or loss for an accounting period falls to be computed on a mark to market basis incorporating a particular method of valuation—

(a) amount A is the aggregate of—

(i) the amount or aggregate amount of the qualifying payment or payments becoming due and payable to the company in the period, and

(ii) any increase for the period, or the part of the period for which the contract is held by the company, in the value of the contract as determined by that method, and

(b) amount B is the aggregate of—

(i) the amount or aggregate amount of the qualifying payment or payments becoming due and payable by the company in the period, and

(ii) any reduction for the period, or the part of the period for which the contract is held by the company, in the value of the contract as so determined.

(5) Where as regards a qualifying contract a qualifying company's profit or loss for an accounting period falls to be computed on a particular accruals basis—

(a) amount A is so much of the qualifying payment or payments received or falling to be received by the company as is allocated to the period on that basis, and

(b) amount B is so much of the qualifying payment or payments made or falling to be made by the company as is so allocated.

(6) Where a qualifying contract is such a contract by reason of being treated, by virtue of section 152 above, as if any provisions for one or more transfers of money or money's worth were not included in it—

(a) so much of any qualifying payment as relates to the transfer or transfers shall be ignored for the purposes of subsections (4) and (5) above, and

(b) so much of any such increase or reduction as is mentioned in paragraph (a) or (b) of subsection (4) above as so relates shall be ignored for the purposes of that subsection.

(7) Subject to subsection (8) below, where a qualifying contract—

(a) becomes held by a qualifying company at any time in an accounting period, or

(b) ceases to be so held at any such time,

it shall be assumed for the purposes of subsection (4) above that its value is nil immediately after it becomes so held or, as the case may be, immediately before it ceases to be so held.

(8) Subsection (7)(b) above does not apply where a qualifying contract is discharged by the making of payments none of which is a qualifying payment for the purposes of this Chapter.

156 Basis of accounting: general.

(1) Where, for the purposes of a qualifying company's accounts, profits and losses for an accounting period on a qualifying contract held by the company are computed on—

(a) a mark to market basis of accounting which satisfies the requirements of this section, or

(b) an accruals basis of accounting which satisfies those requirements,

profits and losses for the period on the contract shall be computed on that basis for the purposes of this Chapter.

(2) Where subsection (1) above does not apply in the case of a qualifying contract held by a qualifying company and an accounting period, profits and losses for the period on the contract shall be computed for the purposes of this Chapter on a mark to market or accruals basis of accounting which—

(a) satisfies the requirements of this section, and

(b) is specified in an agreement between the company and the inspector or, in default of such an agreement, in a notice served on the company by the inspector.

(3) A mark to market basis of accounting satisfies the requirements of this section as regards a qualifying contract if—

(a) computing the profits or losses on the contract on that basis is in accordance with normal accountancy practice;

(b) all relevant payments under the contract are allocated to the accounting periods in which they become due and payable; and

(c) the method of valuation adopted is such as to secure the contract is brought into account at a fair value.

(4) An accruals basis of accounting satisfies the requirements of this section as regards a qualifying contract if—

(a) computing the profits or losses on the contract on that basis is in accordance with normal accountancy practice;

(b) all relevant payments under the contract are allocated to the accounting periods to which they relate, without regard to the accounting periods in which they are made or received, or become due and payable; and

(c) where such payments relate to two or more such periods, they are apportioned between those periods on a just and reasonable basis.

(5) In determining whether, as regards a qualifying contract, a relevant payment is dealt with as mentioned in subsection (4) above—

(a) regard shall be had to the accounting period or periods to which any reciprocal payment or payments are allocated, and to the basis on which any such payment or payments are apportioned between two or more such periods, but

(b) no regard shall be had to the accounting period or periods to which any other payment or payments are allocated, or to the basis on which any such payment or payments are so apportioned.

(6) References in this section to a qualifying company's accounts shall be construed as follows—

(a) in the case of a company formed and registered under the [M30]Companies Act 1985, as references to its accounts drawn up in accordance with the requirements of that Act;

(b) in the case of a company formed and registered under the [M31]Companies (Northern Ireland) Order 1986, as references to its accounts drawn up in accordance with the requirements of that Order;

(c) in any other case, as references to the accounts which it is required to keep under the law of its home State or, if it is not so required to keep accounts, such of its accounts as most closely correspond to the accounts mentioned in paragraph (a) above;

and for the purposes of paragraph (c) above the home State of a company is the country or territory under whose law the company is incorporated.

(7) In this section—

"fair value", in relation to a qualifying contract, means the amount which, if the qualifying company disposed of the contract to a knowledgeable and willing party dealing at arm's length, it would be able to obtain or, as the case may be, would have to pay;

"reciprocal payment", in relation to a relevant payment, means another such payment which is the consideration or part of the consideration for that payment;

"relevant payment" means a qualifying payment made or received, or falling to be made or received, by the company.

(8) In the above definition of "reciprocal payment", the second reference to a relevant payment includes a reference to any payment which—

(a) is subject to a condition precedent, and

(b) would be a relevant payment if the condition were fulfilled.

Marginal Citations

M30 1985 c. 6.

M31 S.I. 1986/1032 (N.I.6).

157 Basis of accounting for linked currency options.

(1) As regards a qualifying contract which is a linked currency option, a qualifying company's profit or loss for an accounting period shall be computed on a mark to market basis of accounting.

(2) Accordingly if, as regards such an option, a qualifying company's profit or loss for an accounting period would, apart from subsection (1) above, fall to be computed on an accruals basis of accounting, that profit or loss shall be computed for the purposes of this Chapter on a mark to market basis of accounting which—

(a) satisfies the requirements of section 156 above, or would satisfy those requirements if paragraph (a) of subsection (3) of that section were omitted, and

(b) is specified in an agreement between the company and the inspector or, in default of such an agreement, in a notice served on the company by the inspector.

(3) A currency option is a linked currency option for the purposes of this section if each of the conditions mentioned below is fulfilled.

(4) The first condition is that—

(a) in the case of an option exercisable by the qualifying company against the other party, another currency option is exercisable by that party against the company; or

(b) in the case of an option exercisable by the other party against the qualifying company, another currency option is exercisable by the company against that party.

(5) For the purposes of subsection (4) above, another currency option which is exercisable by or against an associated company of the qualifying company, or by or against an associated company of the other party to the currency option in question, shall be treated as exercisable by or against the qualifying company or that party.

(6) The second condition is that the terms of the two options are such that—

(a) they must be exercised (if at all) at the same, or substantially the same, time, and

(b) the rights and duties under the contract which would arise if the one option were exercised are the same, or substantially the same, as those under the contract which would arise if the other option were exercised.

(7) Where the currency option in question is such an option by virtue of section 150(8) above, subsections (4) and (5) above shall be construed as if—

(a) any reference to an option being exercisable by any person were a reference to a contract subject to a condition precedent the fulfilment of which would result in a transfer of value to that person, and

(b) any reference to an option being exercisable against any person were a reference to a contract subject to a condition precedent the fulfilment of which would result in a transfer of value by that person.

(8) For the purposes of subsection (7) above there is a transfer of value to or by any person if, immediately after the fulfilment of the condition, the value of that person's net assets is more or, as the case may be, less than it would have been but for the fulfilment of the condition.

(9) Any reference in subsection (8) above to the value of a person's net assets being more or less than it would have been but for the fulfilment of the condition includes a reference to the value of that person's net liabilities being less or, as the case may be, more than it would have been but for the fulfilment of the condition.

(10) In this section "associated company" shall be construed in accordance with section 416 of the Taxes Act 1988 and any reference to a currency option is a reference to one which is a qualifying contract.

158 Adjustments for changes in basis of accounting.

(1) Subsections (2) to (5) below apply where, as regards a qualifying contract and an accounting period, a qualifying company's profit or loss is computed on a basis of accounting (the new basis) other than that adopted for the immediately preceding accounting period.

(2) There shall be added to amount A an amount equal to any amount, or the aggregate of any amounts—

(a) which have not been included in amount A for a preceding accounting period, and

(b) which would have been so included if the new basis had been adopted for that period.

(3) There shall be deducted from amount A or, as the case may require, added to amount B an amount equal to any amount, or the aggregate of any amounts—

(a) which have been included in amount A for a preceding accounting period, and

(b) which would not have been so included if the new basis had been adopted for that period.

(4) There shall be added to amount B an amount equal to any amount, or the aggregate of any amounts—

(a) which have not been included in amount B for a preceding accounting period, and

(b) which would have been so included if the new basis had been adopted for that period.

(5) There shall be deducted from amount B or, as the case may require, added to amount A an amount equal to any amount, or the aggregate of any amounts—

(a) which have been included in amount B for a preceding accounting period, and

(b) which would not have been so included if the new basis had been adopted for that period.

(6) Subject to subsection (7) below, subsections (2) to (5) above also apply where a contract or option becomes a qualifying contract by virtue of section 147(2) or 148(2) or (3) above at the beginning of the first day of an accounting period of a qualifying company.

(7) Where subsections (2) to (5) above apply by virtue of subsection (6) above, they shall have effect as if—

(a) any reference to the new basis were a reference to the basis of accounting on which, as regards the qualifying contract, the company's profit or loss for the accounting period is calculated,

(b) any reference to being or not being included in amount A for a preceding accounting period were a reference to being or not being taken into account as receipts or increases in value in computing the company's profits or losses for such a period, and

(c) any reference to being or not being included in amount B for a preceding accounting period were a reference to being or not being taken into account as deductions or reductions in value in computing the company's profits or losses for such a period.

Modifications etc. (not altering text)

C9 S. 158(2)-(5) modified (29.4.1996 with effect as mentioned in s. 105(1) of the modifying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(3)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

Treatment of profits and losses

159 Trading profits and losses.

(1) Subsections (2) and (3) below apply where—

(a) as regards a qualifying contract a profit or loss accrues to a qualifying company for an accounting period, and

(b) the qualifying contract was at any time in the period held by the company for the purposes of a trade or part of a trade carried on by it.

(2) If throughout the accounting period the qualifying contract was held by the company solely for the purposes of the trade or part, the whole of the profit or loss shall be treated for the purposes of the Tax Acts as a profit or loss of the trade or part for the period.

(3) In any other case the profit or loss shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part shall be treated for the purposes of the Tax Acts as a profit or loss of the trade or part for the period.

(4) The preceding provisions of this section apply notwithstanding anything in section 74 of the Taxes Act 1988 (general rules as to deductions not allowable).

160 Non-trading profits and losses.

(1) In a case where—

(a) as regards a qualifying contract a profit or loss accrues to a qualifying company for an accounting period, and

(b) the whole or part of the profit or loss does not fall to be treated for the purposes of the Tax Acts as a profit or loss of a trade or part of a trade for the period,

the whole or part (as the case may be) shall be treated for the purposes of this section as a non-trading profit or loss of the company for the period.

[F36(2) Any amount which for the purposes of this section is treated as a non-trading profit of a company for any accounting period shall be brought into account for that accounting period as if it were a non-trading credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of a loan relationship of the company.

(2A) Any amount which for the purposes of this section is treated as a non-trading loss of a company for any accounting period shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect.**]**

Textual Amendments

F36 S. 160(2)(2A) substituted for s. 160(2)-(4) (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 75** (with savings etc. Pt. IV Chapter II (ss. 80-105))

Special cases

161 Termination etc. of qualifying contracts.

(1) This section applies where at any time (the relevant time) in an accounting period of a qualifying company—

(a) a qualifying contract held by the company is terminated,

(b) such a contract is disposed of by the company, or

(c) a contract held by the company is so varied as to cease to be such a contract.

(2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above—

(a) there shall be deducted from amount A or, as the case may require, added to amount B so much of any qualifying payment as has not become due and payable to the company before the relevant time but has been included in amount A for the period or any previous accounting period, and

(b) there shall be deducted from amount B or, as the case may require, added to amount A so much of any qualifying payment as has not become due and payable by the company before the relevant time but has been included in amount B for the period or any previous accounting period.

162 Exchange gains and losses on currency contracts.

Where, as regards a currency contract held by a qualifying company and an accounting period, amounts A and B fall to be determined under section 155(4) above—

(a) the amount of any exchange gain which as regards the contract accrues to the company for the period shall be deducted from amount A or, as the case may require, added to amount B; and

(b) the amount of any exchange loss which as regards the contract accrues to the company for the period shall be deducted from amount B or, as the case may require, added to amount A.

163 Irrecoverable payments.

(1) Subsections (2) and (3) below apply in any case **[**F37where a qualifying company—

(a) is entitled to a right to receive a qualifying payment, and

(b) makes a claim**]** within two years after the end of an accounting period of the company, that the whole or any part of the payment outstanding immediately before the end of that period could at that time reasonably have been regarded as having become irrecoverable in that period.

(2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(4) above, an amount equal to so much of the payment as—

(a) **[**F38may reasonably be regarded as having**]** become irrecoverable in the period, and

(b) became due and payable in the period or any previous accounting period,

shall be deducted from amount A, or as the case may require, added to amount B.

(3) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above, an amount equal to so much of the payment as—

(a) **[**F38may reasonably be regarded as having**]** become irrecoverable in the period, and

(b) was allocated to the period or any previous accounting period,

shall be deducted from amount A, or as the case may require, added to amount B.

(4) In any case where—

(a) as regards a qualifying contract and an accounting period of a qualifying company, an amount has been deducted or added as mentioned in subsection (2) or (3) above, and

(b) the whole or any part of so much of the qualifying payment as **[**F39fell within paragraphs (a) and (b) of that subsection**]** is recovered in a later accounting period of the company,

an amount equal to so much of the payment as is so recovered shall, as regards the qualifying contract and the later accounting period, be deducted from amount B, or as the case may require, added to amount A.

Textual Amendments

F37 Words in s. 163(1) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(2)**

F38 Words in s. 163(2)(a)(3)(a) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(3)**

F39 Words in s. 163(4)(b) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(4)**

164 Released payments.

(1) Subsections (2) and (3) below apply in any case where—

(a) a qualifying company is subject to a duty to make a qualifying payment, and

(b) at any time in an accounting period of the company, the whole or any part of the payment then outstanding is released by the person to whom the duty is owed.

(2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(4) above, an amount equal to so much of the payment as—

(a) is released in the period, and

(b) became due and payable in the period or any previous accounting period,

shall be deducted from amount B, or as the case may require, added to amount A.

(3) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above, an amount equal to so much of the payment as—

(a) is released in the period, and

(b) was allocated to the period or any previous accounting period,

shall be deducted from amount B, or as the case may require, added to amount A.

Anti-avoidance and related provisions

165 Transfers of value by qualifying companies.

(1) Subsection (2) below applies where, as a result of—

(a) a qualifying company entering into a relevant transaction on or after its commencement day, or

(b) the expiry on or after a qualifying company's commencement day of an option held by the company which, until its expiry, was a qualifying contract,

there is a transfer of value by the qualifying company to an associated company or an associated third party.

(2) For the accounting period of the qualifying company in which the transaction was entered into or the option expired, there shall be deducted from amount B or, as the

case may require, added to amount A an amount equal to the value transferred by that company.

(3) For the purposes of subsection (1) above there is a transfer of value by the qualifying company to an associated company or an associated third party if, immediately after the transaction or expiry—

(a) the value of the qualifying company's net assets is less, and

(b) the value of the associated company's or associated third party's net assets is more,

than it would have been but for the transaction or expiry; and the amount by which the value mentioned in paragraph (a) above is less is the value transferred by the qualifying company for the purposes of subsection (2) above.

(4) Any reference in subsection (3) above to the value of a person's net assets being less or more than it would have been but for the transaction or expiry includes a reference to the value of that person's net liabilities being more or, as the case may be, less than it would have been but for the transaction or expiry.

(5) In applying subsection (3) above, no account shall be taken of any such payment as is mentioned in section 151(2)(a) or (b) above.

(6) A third party, that is to say, a person who is not an associated company, is an associated third party for the purposes of this section at the time when the relevant transaction is entered or the option expires if, at that time, each of the two conditions mentioned below is fulfilled.

(7) The first condition is that the relevant transaction is entered into or the option is allowed to expire in pursuance of arrangements made with the third party.

(8) The second condition is that, in pursuance of those arrangements, a transfer of value has been or will be made to an associated company (directly or indirectly) by the third party or by a company which was at the time when the arrangements were made an associated company of that party.

(9) Where it appears to the inspector that there is a transfer of value by the qualifying company to a third party, he may by notice in writing require the company, within such time (which shall not be less than 30 days) as may be specified in the notice, to furnish to the inspector such information—

(a) as is in its possession or power, and

(b) as the inspector reasonably requires for the purpose of determining whether the third party is an associated third party for the purposes of this section.

(10) Subsection (3) above shall (with the necessary modifications) apply for the purposes of subsections (7) to (9) above as it applies for the purposes of subsection (1) above.

(11) In this section—

"associated company" shall be construed in accordance with section 416 of the Taxes Act 1988;

"relevant transaction" means a transaction as a result of which—

(a) a qualifying company becomes party to a qualifying contract, or

(b) the terms of a qualifying contract to which a qualifying company is party are varied;

and any reference to an associated company is, unless the contrary intention appears, a reference to an associated company of the qualifying company.

166 Transfers of value to associated companies.

(1) Subsection (2) below applies where subsection (2) of section 165 above applies and either—

(a) the transfer of value by the qualifying company is to an associated company which is itself a qualifying company; or

(b) the transfer of value by the qualifying company is to an associated third party, and the transfer of value mentioned in subsection (8) of that section—

(i) is to an associated company which is itself a qualifying company, and

(ii) results from that company entering into a relevant transaction.

(2) For the corresponding accounting period or periods of the associated company, there shall be deducted from amount A or, as the case may require, added to amount B an amount equal to the value transferred to the associated company.

(3) Subsection (3) of section 165 above shall (with the necessary modifications) apply for the purposes of subsection (2) above as it applies for the purposes of subsection (2) of that section.

(4) In subsection (2) above "corresponding accounting period or periods", in relation to the associated company, means the accounting period or periods of that company comprising or together comprising the accounting period of the qualifying company in which the transaction was entered into or the option expired, and any necessary apportionment shall be made between corresponding accounting periods if more than one.

(5) In this section any expressions which are also used in section 165 above shall be construed in accordance with the provisions of that section.

167 Transactions not at arm's length.

(1) A transaction entered into on or after a qualifying company's commencement day is a relevant transaction for the purposes of this section if as a result of the transaction—

(a) the qualifying company becomes party to a qualifying contract, or

(b) the terms of a qualifying contract to which the qualifying company is party are varied.

(2) Subsections (3) to (5) below apply where—

(a) if the parties to a relevant transaction had been dealing at arm's length, the transaction—

(i) would not have been entered into at all, or

(ii) would have been entered into on different terms, [F40]. . .

[F40](b) . . . . . .

but subject, in a case falling within paragraph (a)(ii) above, to the modifications made by subsection (7) below.

(3) For each relevant accounting period for the whole of which the other party is a qualifying company, the following deductions shall be made—

(a) from amount B, a deduction of such amount as may be necessary to reduce amount B to nil, and

(b) from amount A, a deduction of such amount as may be necessary to reduce amount A to nil.

(4) For each relevant accounting period for any part of which the other party is not a qualifying company, the following deductions shall be made—

(a) from amount B, a deduction of such amount as may be necessary to reduce amount B to nil, and

(b) from amount A, a deduction of the same amount or (where that amount exceeds amount A) a deduction of so much of that amount as may be necessary to reduce amount A to nil.

(5) For each relevant accounting period (except the first) for any part of which the other party is not a qualifying company, there shall also be deducted from amount A or, as the case may require, added to amount B such amount as may be necessary to secure that amount C does not exceed amount D where—

(a) amount C is any amount by which the aggregate of adjusted amounts A exceeds the aggregate of adjusted amounts B, and

(b) amount D is any amount by which the aggregate of unadjusted amounts A exceeds the aggregate of unadjusted amounts B.

(6) In subsection (5) above—

"adjusted" means adjusted under subsections (4) and (5) above and "unadjusted" shall be construed accordingly;

"the aggregate of adjusted amounts A", in relation to a relevant accounting period, means the aggregate of—

(a) adjusted amount A for that period, and

(b) adjusted amount A for each preceding relevant accounting period,

and similar expressions shall be construed accordingly.

(7) In a case falling within subsection (2)(a)(ii) above—

(a) subsections (3) to (5) above shall have effect as if any reference to amount A or amount B were a reference to the relevant proportion of that amount; and

(b) the definitions in subsection (6) above of "the aggregate of adjusted amounts A" and similar expressions shall have effect as if any reference to adjusted amount A were a reference to the adjusted relevant proportion of amount A;

and in this subsection "the relevant proportion" means such proportion as may be just and reasonable having regard to the differences between the terms mentioned in subsection (2)(a)(ii) above and the terms on which the relevant transaction was actually entered into.

(8) In applying subsections (2) and (7) above—

(a) no account shall be taken of any transfer of value in respect of which an adjustment is made under section 165 or 166 above, but

(b) subject to that, all factors shall be taken into account.

(9) The factors which may be so taken into account include—

(a) in a case where the qualifying contract is an interest rate contract or option, any notional principal amounts and rates of interest that would have been involved;

(b) in a case where the qualifying contract is a currency contract or option, any currencies and amounts that would have been involved;

[[F41](ba) in a case where the qualifying contract is a debt contract or option, the amount of the debt by reference to which any loan relationship that would have been

involved would have subsisted, and any terms as to repayment, redemption or interest that, in the case of that debt or any asset representing it, would have been involved; and**]**

(c) in **[**[F42]any such**]** case, any transactions which are related to the relevant transaction.

(10) In this section "relevant accounting period", in relation to a relevant transaction, means—

(a) the accounting period of the qualifying company in which the transaction was entered into, and

(b) each subsequent accounting period of that company for the whole or part of which it is party to the contract.

Textual Amendments

F40 S. 167(2)(b) and the preceding word "and" repealed (31.7.1998 with effect as mentioned in s. 109(4) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(26)**, Note

F41 S. 167(9)(ba) inserted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 76(1)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

F42 Words in s. 167(9)(c) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 76(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

168 Qualifying contracts with non-residents.

(1) Subject to subsections (3) to (5) below, subsections (4) and (5) of section 167 above ("the relevant subsections") also apply where, as a result of any transaction entered into on or after a qualifying company's commencement day—

(a) the qualifying company and a non-resident, that is, a person who is not resident in the United Kingdom, both become party to a qualifying contract;

(b) the qualifying company becomes party to a qualifying contract to which a non-resident is party; or

(c) a non-resident becomes party to a qualifying contract to which the qualifying company is party.

(2) For the purposes of the relevant subsections as so applied, the definition of "relevant accounting period" in subsection (10) of that section shall have effect as if—

(a) any reference to a relevant transaction were a reference to the transaction mentioned in subsection (1) above; and

(b) in paragraph (b), for the words "it is" there were substituted the words "both it and the non-resident are".

(3) The relevant subsections shall not apply where the qualifying company is a bank, building society or financial trader and—

(a) it holds the qualifying contract solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom, and

(b) it is party to the contract otherwise than as agent or nominee of another person.

(4) The relevant subsections shall not apply where—

(a) the non-resident holds the qualifying contract solely for the purposes of a trade or part of a trade carried on by him in the United Kingdom through a branch or agency, and

(b) he is party to the contract otherwise than as agent or nominee of another person.

(5) The relevant subsections shall not apply where arrangements made with the government of the territory in which the non-resident is resident—

(a) have effect by virtue of section 788 of the Taxes Act 1988, and

(b) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements).

(6) Where the non-resident is party to the contract as agent or nominee of another person, subsection (5) above shall have effect as if the reference to the territory in which the non-resident is resident were a reference to the territory in which that other person is resident.

VALID FROM 24/07/2002

[F43 168A Qualifying contracts for unallowable purposes

(1) Where in any accounting period a qualifying contract to which a company is party has an unallowable purpose, any amounts which for that period fall, in the case of the company, to be brought into account for the purposes of section 155 above as part of amount B shall (subject to subsection (2) below) not include so much of the amounts given by the accounting method used as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.

(2) The total of any amounts which by virtue of subsection (1) above are not to be brought into account in the accounting period as part of amount B may not exceed the maximum amount.

(3) For the purposes of subsection (2) above, the maximum amount, in relation to the accounting period, is—

(a) if in the accounting period amount B exceeds amount A, the amount by which amount B exceeds amount A; and

(b) if in the accounting period amount A exceeds or equals amount B, nil.

(4) For the purposes of subsection (3) above, amount A and amount B shall be determined in relation to the qualifying contract in accordance with section 155 above and, in so determining amount B, so much of any amount as is referable to the unallowable purpose of the contract shall (notwithstanding subsection (1) above) be brought into account.

(5) For the purposes of this section a qualifying contract to which a company is party shall be taken to have an unallowable purpose in an accounting period where the purposes for which, at times during that period, the company is party to the contract include a purpose ("the unallowable purpose") which is not amongst the business or other commercial purposes of the company.

(6) For the purposes of this section the business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.

(7) For the purposes of this section, where one of the purposes for which a company is party to a qualifying contract at any time is a tax avoidance purpose, that purpose

shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the contract at that time.

(8) The reference in subsection (7) above to a tax avoidance purpose is a reference to any purpose that consists in securing a tax advantage (whether for the company or any other person).

(9) In this section "tax advantage" has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (tax avoidance).**]**

Textual Amendments

F43 S.168A inserted (with effect as mentioned in s. 69(2))4) of the amending Act) by Finance Act 2002 (c. 23), **s. 69(1)**

Miscellaneous

169 Insurance and mutual trading companies.

(1) Subject to the provisions of Schedule 18 to this Act and subsection (2) below, this Chapter shall apply in relation to insurance companies and mutual trading companies as it applies in relation to other qualifying companies.

(2) The Treasury may by regulations provide that this Chapter shall have effect in relation to currency contracts held by insurance companies with such modifications as may be specified in the regulations.

(3) Regulations under subsection (2) above may make different provision as respects contracts held for different purposes or in different circumstances.

170 Investment trusts.

(1) For the purpose of determining whether a qualifying company may be approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for any accounting period, any non-trading profits which the company is treated for the purposes of section 160 above as having for that period shall be treated as income derived from shares or securities.

(2) In this section "shares" has the same meaning as in section 842 of the Taxes Act 1988.

F44171 . . . . . .

Textual Amendments

F44 S. 171 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)**, Note (with savings etc. in Pt. IV Chapter II (ss. 80-105))

172 Partnerships involving qualifying companies.

(1) Subject to the provisions of this section, this Chapter shall have effect as if qualifying partnerships were qualifying companies.

(2) A partnership is a qualifying partnership for the purposes of this section if one or more of the partners are qualifying companies.

(3) Subsections (4) to (6) below apply where—

(a) one or more of the members of a qualifying partnership are not qualifying companies, and

(b) as regards one or more qualifying contracts, one or more profits or losses accrue to the partnership for an accounting period.

(4) Two computations of the profits and losses for the period shall be made under subsection (1) of section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses)—

(a) one (the first computation) on the basis that the partnership is a qualifying partnership, and

(b) the other (the second computation) on the basis that the partnership is not such a partnership.

(5) The first computation shall be used for the purpose of determining, under subsection (2) of that section, the share or shares of such of the partners as are qualifying companies.

(6) The second computation shall be used for the purpose of determining, under that subsection, the share or shares of such of the partners as are not qualifying companies.

Supplemental

173 Prevention of double charging etc.

(1) Subsection (2) below applies to any amount—

(a) which under or by virtue of this Chapter is chargeable to corporation tax as profits of a qualifying company, or

(b) which falls to be taken into account as a receipt in computing for the purposes of this Chapter the profits or losses of such a company.

(2) An amount to which this subsection applies—

(a) shall not otherwise than under or by virtue of this Chapter be chargeable to corporation tax as profits of the company,

(b) shall not be taken into account as a receipt in computing for other purposes of the Tax Acts the profits or losses of the company, and

(c) for the purposes of the [M32]Taxation of Chargeable Gains Act 1992, shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain.

(3) Subsection (4) below applies to any amount—

(a) which is allowable as a deduction in computing for the purposes of this Chapter the profits or losses of a qualifying company, or

(b) which under or by virtue of this Chapter is allowable as a deduction in computing any other income or profits or gains or losses of such a company for the purposes of the Tax Acts, or

(c) which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains;

and that subsection applies to any such amount irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

(4) An amount to which this subsection applies—

(a) shall not be allowable as a deduction in computing for other purposes of the Tax Acts the profits or losses of the company,

(b) shall not otherwise than under or by virtue of this Chapter be allowable as a deduction in computing any other income or profits or gains or losses of the company for the purposes of the Tax Acts,

(c) shall not be treated as a charge on income for the purposes of corporation tax, and

(d) shall be excluded from the sums allowable under section 38 of the [M33]Taxation of Chargeable Gains Act 1992 as a deduction in the computation of the gain.

(5) In this section—

(a) references to the purposes of this Chapter include references to the purposes of **[**[F45]Chapter II of Part IV of the Finance Act 1996 (loan relationships), so far as that Chapter is applied by virtue of section 160(2) or (2A) above,**]** and

(b) references to other purposes of the Tax Acts are references to the purposes of those Acts other than those of this Chapter.

Textual Amendments

F45 Words in s. 173(5)(a) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 77** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

Marginal Citations

M32 1992 c.12.

M33 1992 c.12.

174 Prevention of deduction of tax.

Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, a qualifying company shall not be required, on making a qualifying payment, to deduct out of it any sum representing an amount of income tax on it.

175 Transitional provisions.

(1) In a case where—

(a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and

(b) at that time, it is held for the purposes of a trade or part of a trade carried on by the company, **[**[F46]and

(c) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for an accounting period beginning before that time it falls (or would fall) to be taken into account as a profit or loss of the trade or part,**]**

subsection (4) of section 153 above shall have effect in relation to the contract and the company as if section 147(2) above applied for the purposes of this Chapter except those of that subsection.

[F47(2) In a case where—

(a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and

(b) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for the accounting period beginning with that time it does not fall (or would not fall) to be taken into account as a profit or loss of a trade or part of a trade carried on by the company,

in applying section 158(2) and (4) above in relation to the contract and the period section 153(4) and (5) above shall be treated as omitted.**]**

Textual Amendments

F46 S. 175(1)(c) and the word "and"immediately preceding it inserted (*retrospectively*) by 1995 c. 4, **s. 132(1)(2)**

F47 S. 175(2) substituted (*retrospectively*) by 1995 c. 4, **s. 132(1)(3)**

176 Minor and consequential amendments.

F48(1) . . . . . .

(2) In Schedule 27 to that Act (distributing funds) in paragraph 5 (United Kingdom equivalent profits) the following sub-paragraph shall be substituted for sub-paragraph (2A)—

"(2A) In applying sub-paragraph (1) above the effect of the following shall be ignored, namely—

(a) sections 125 to 133 of the Finance Act 1993 (exchange gains and losses), and

(b) sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994 (treatment of profits and losses on interest rate and currency contracts)."

Textual Amendments

F48 S. 176(1) repealed (1.5.1995 with effect as mentioned in Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(5)**, Note 2 (with Sch. 8 paras. 55(2), 57(1))

177 Interpretation of Chapter II.

(1) In this Chapter—

"appointed day" has the meaning given by section 147(4) above;

"bank" means any of the following—

(a) the Bank of England;

[F49(b) any person falling within section 840A(1)(b) of the Taxes Act 1988; and

(c) any firm falling within section 840A(1)(c) of that Act;**]**

"commencement day" **[**F50—

(a) for the purposes of this Chapter as it has effect in relation to any debt contract or option, means (subject to paragraph 25 of Schedule 15 to the Finance Act 1996) 1st April 1996; and

(b) for all other purposes**]** has the meaning given by section 147(4) above;

"currency contract" and "currency option" shall be construed in accordance with section 150 above;

[F51"debt contract" and "debt option" shall be construed in accordance with section 150A above;**]**

. . .

F52 . . .

[F53"financial trader" means—

(a) any person who—

(i) falls within section 31(1)(a), (b) or (c) of the Financial Services and Markets Act 2000, and

(ii) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or

(b) any person not falling within paragraph (a) above who is approved by the Board for the purposes of this paragraph;**]**

"inspector" includes any officer of the Board;

"insurance company" means a company **[**F54which **[**F55effects or carries out contracts of insurance and, for the purposes of this definition, "contract of insurance" has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;**]]**

"interest rate contract" and "interest rate option" shall be construed in accordance with section 149 above;

F56 . . .

"mutual trading company" means a company carrying on any business of mutual trading or mutual insurance or other mutual business;

"qualifying company" has the meaning given by section 154 above;

"qualifying contract" has the meaning given by section 147(1) above;

"qualifying payment" shall be construed in accordance with section 153 above.

(2) For the purposes of this Chapter—

(a) a company becomes entitled to rights or subject to duties under an interest rate contract or option, **[**F57a currency contract or option or a debt contract or option**]** when it becomes party to the contract or option; and

(b) a company holds such a contract or option at a particular time if it is then entitled to rights or subject to duties under it;

and it is immaterial for the purposes of paragraph (b) above when the rights or duties fall to be exercised or performed.

(3) Any provision of this Chapter other than section 167 above which requires any amount (the relevant amount) to be deducted from amount A or, as the case may require, added to amount B shall be construed as requiring the following deductions or additions to be made—

(a) where amount A is not less than the relevant amount, a deduction from amount A of an amount equal to the relevant amount;

(b) where amount A is less than the relevant amount but is more than nil—

(i) a deduction from amount A of an amount equal to so much of the relevant amount as may be necessary to reduce amount A to nil, and

(ii) an addition to amount B of an amount equal to the remainder of the relevant amount;

(c) where amount A is nil, an addition to amount B of an amount equal to the relevant amount.

(4) Subsection (3) above shall be read as applying equally to any such provision which requires any amount to be deducted from amount B or, as the case may be, added to amount A, and for that purpose shall have effect with such modifications as may be requisite.

(5) In this Chapter expressions which are not defined or otherwise explained but are used in Chapter II of Part II of the [M34]Finance Act 1993 (exchange gains and losses) have the same meanings as in that Chapter.

(6) The Treasury may by order amend any of sections 149 to 153 above; and any such order may—

(a) make corresponding amendments to section 126 of the [M35]Finance Act 1993;

(b) make consequential amendments to such of the provisions of this Chapter or Chapter II of Part II of that Act as relate to currency contracts; and

(c) contain such other consequential provisions, and such supplementary, incidental or transitional provisions, as appear to the Treasury to be necessary or expedient.

Textual Amendments

F49 S. 177(1): Paragraphs (b)(c) in the definition of "bank" substituted (1.12.2001) by S.I. 2001/3629, **art. 84(2)**

F50 S. 177(1): Words in the definition of "commencement day" inserted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(1)(a)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

F51 S. 177(1): Definitions of "debt contract" and "debt option" inserted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(1)(b)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

F52 S. 177(1): Definition of "European authorised institution" omitted (1.12.2001) by virtue of S.I. 2001/3629, **art. 84(3)**

F53 S. 177(1): Definition of "financial trader" substituted (1.12.2001) by S.I. 2001/3629, **art. 84(4)**

F54 S. 177(1): Words in the definition of "insurance company" substituted (1.5.1995) by 1995 c. 4, **s. 52(3)**

F55 S. 177(1): Words in the definition of "insurance company" substituted (1.12.2001) by S.I. 2001/3629, **art. 84(5)**

F56 S. 177(1): Definition of "investment business" omitted (1.12.2001) by virtue of S.I. 2001/3629, **art. 84(6)**

F57 Words in s. 177(2)(a) substituted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

Marginal Citations
M34 1993 c.34.
M35 1993 c.34.

CHAPTER III

MANAGEMENT: SELF-ASSESSMENT ETC.

Income tax and capital gains tax

178 Personal and trustee's returns.

(1) For subsection (1) of section 8 of the Management Act (personal return) there shall be substituted the following subsections—

"(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, he may be required by a notice given to him by an officer of the Board—

(a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is—

(a) the 31st January next following the year of assessment, or

(b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given.

(1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under this section shall include each amount which, in any relevant statement, is stated to be equal to his share of any income, loss or charge for the period in respect of which the statement is made.

(1C) In subsection (1B) above "relevant statement" means a statement which, as respects the partnership, falls to be made under section 12AB of this Act for a period which includes, or includes any part of, the year of assessment or its basis period."

(2) For subsection (1) of section 8A of the Management Act (trustee's return) there shall be substituted the following subsections—

"(1) For the purpose of establishing the amounts in which a trustee of a settlement, and the settlors and beneficiaries, are chargeable to income tax and capital gains tax for a year of assessment, an officer of the Board may by a notice given to the trustee require the trustee—

(a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required;

and a notice may be given to any one trustee or separate notices may be given to each trustee or to such trustees as the officer thinks fit.

(1A) The day referred to in subsection (1) above is—

(a) the 31st January next following the year of assessment, or

(b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given."

179 Returns to include self-assessment.

For section 9 of the Management Act there shall be substituted the following section—

"**9 Returns to include self-assessment.**

(1) Subject to subsection (2) below, every return under section 8 or 8A of this Act shall include an assessment (a self-assessment) of the amounts in which, on the basis of the information contained in the return, the person making the return is chargeable to income tax and capital gains tax for the year of assessment.

(2) A person shall not be required to comply with subsection (1) above if he makes and delivers his return for a year of assessment—

(a) on or before the 30th September next following the year, or

(b) where the notice under section 8 or 8A of this Act is given after the 31st July next following the year, within the period of two months beginning with the day on which the notice is given.

(3) Where, in making and delivering a return, a person does not comply with subsection (1) above, an officer of the Board shall if subsection (2) above applies, and may in any other case—

(a) make the assessment on his behalf on the basis of the information contained in the return, and

(b) send him a copy of the assessment so made;

and references in the following provisions of this Act to a person's self-assessment include references to an assessment made on a person's behalf under this subsection.

(4) Subject to subsection (5) below—

(a) at any time before the end of the period of nine months beginning with the day on which a person's return is delivered, an officer of the Board may by notice to that person so amend that person's self-assessment as to correct any obvious errors or mistakes in the return (whether errors of principle, arithmetical mistakes or otherwise); and

(b) at any time before the end of the period of twelve months beginning with the filing date, a person may by notice to an officer of the Board

so amend his self-assessment as to give effect to any amendments to his return which he has notified to such an officer.

(5) No amendment of a self-assessment may be made under subsection (4) above at any time during the period—

(a) beginning with the day on which an officer of the Board gives notice of his intention to enquire into the return, and

(b) ending with the day on which the officer's enquiries into the return are completed.

(6) In this section and section 9A of this Act "the filing date" means the day mentioned in section 8(1A) or, as the case may be, section 8A(1A) of this Act."

[F58]180 . . . . . .

Textual Amendments

F58 S. 180 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

Corporation tax

[F59]181 . . . . . .

Textual Amendments

F59 S. 181 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

[F60]182 . . . . . .

Textual Amendments

F60 S. 182 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

[F61]183 . . . . . .

Textual Amendments

F61 S. 183 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

Partnerships

184 Partnership return.

After section 12 of the Management Act there shall be inserted the following section—

" Partnerships

12AA Partnership return.

(1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating—

(a) the assessment to income tax for a year of assessment, and

(b) the assessment to corporation tax for any period,

of each partner who is liable to be so assessed, an officer of the Board may act under subsection (2) or (3) below (or both).

(2) An officer of the Board may by a notice given to the partners require such person as is identified in accordance with rules given with the notice—

(a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts and statements as may reasonably be so required.

(3) An officer of the Board may by notice given to any partner require the partner—

(a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts and statements as may reasonably be so required;

and a notice may be given to any one partner or separate notices may be given to each partner or to such partners as the officer thinks fit.

(4) In the case of a partnership which includes one or more individuals, the day specified in a notice under subsection (2) or (3) above shall not be earlier than—

(a) the 31st January next following the year of assessment concerned, or

(b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given.

(5) In the case of a partnership which includes one or more companies, the day specified in a notice under subsection (2) or (3) above shall not be earlier than—

(a) the first anniversary of the end of the relevant period, or

(b) where the notice under this section is given more than nine months after the end of the relevant period, the last day of the period of three months beginning with the day on which the notice is given;

and the relevant period for the purposes of this subsection and subsection (6) below is the period in respect of which the return is required.

(6) Every return under this section shall include—

(a) a declaration of the name, residence and tax reference of each of the persons who have been partners—

(i) for the whole of the relevant period, or

(ii) for any part of that period,

and, in the case of a person falling within sub-paragraph (ii) above, of the part concerned; and

(b) a declaration by the person making the return to the effect that it is to the best of his knowledge correct and complete.

(7) Every return under this section shall also include, if the notice under subsection (2) or (3) above so requires—

(a) with respect to any disposal of partnership property during a period to which any part of the return relates, the like particulars as if the partnership were liable to tax on any chargeable gain accruing on the disposal, and

(b) with respect to any acquisition of partnership property, the particulars required under section 12(2) of this Act.

(8) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

(9) Notices under this section may require different information, accounts and statements in relation to different descriptions of partnership.

(10) In this section "residence", in relation to a company, means its registered office."

185 Partnership return to include partnership statement.

After section 12AA of the Management Act there shall be inserted the following section—

"**12AB Partnership return to include partnership statement.**

(1) Every return under section 12AA of this Act shall include a statement (a partnership statement) of the following amounts, namely—

(a) in the case of each period of account ending within the period in respect of which the return is made—

(i) the amount of income or loss from each source which, on the basis of the information contained in the return, has accrued to or has been sustained by the partnership for that period, and

(ii) the amount of each charge which, on that basis, was a charge on the income of the partnership for that period; and

(b) in the case of each such period and each of the partners, the amount which, on that basis, is equal to his share of that income, loss or charge.

(2) Subject to subsection (3) below—

(a) at any time before the end of the period of nine months beginning with the day on which a person's return is delivered, an officer of the

Board may by notice to that person so amend that person's partnership statement as to correct any obvious errors or mistakes in the return (whether errors of principle, arithmetical mistakes or otherwise); and

(b) at any time before the end of the period of twelve months beginning with the filing date, a person may by notice to an officer of the Board so amend his partnership statement as to give effect to any amendments to his return which he has notified to such an officer.

(3) No amendment of a partnership statement may be made under subsection (2) above at any time during the period—

(a) beginning with the day on which an officer of the Board gives notice of his intention to enquire into the return, and

(b) ending with the day on which the officer's enquiries into the return are completed.

(4) Where a partnership statement is amended under subsection (2) above, the officer shall by notice to the partners so amend their self-assessments under section 9 or 11AA of this Act as to give effect to the amendments of the partnership statement.

(5) In this section—

"filing date" means the day specified in the notice under subsection (2) or, as the case may be, subsection (3) of section 12AA of this Act;

"period of account", in relation to a partnership, means any period for which accounts are drawn up."

[F62]186 . . . . . .

Textual Amendments

F62 S. 186 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

Enquiries: procedure

187 Power to call for documents.

Immediately before section 20 of the Management Act there shall be inserted the following section—

"**19A Power to call for documents for purposes of certain enquiries.**

(1) This section applies where an officer of the Board gives notice under section 9A(1), 11AB(1) or 12AC(1) of this Act to any person (the taxpayer) of his intention to enquire into—

(a) the return on the basis of which the taxpayer's self-assessment or partnership statement was made, or

(b) any amendment of that return on the basis of which that assessment or statement has been amended by the taxpayer.

(2) For the purpose of enquiring into the return or amendment, the officer may at the same or any subsequent time by notice in writing require the taxpayer, within such time (which shall not be less than 30 days) as may be specified in the notice—

(a) to produce to the officer such documents as are in the taxpayer's possession or power and as the officer may reasonably require for the purpose of determining whether and, if so, the extent to which the return is incorrect or incomplete or the amendment is incorrect, and

(b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.

(3) To comply with a notice under subsection (2) above, copies of documents may be produced instead of originals; but—

(a) the copies must be photographic or otherwise by way of facsimile; and

(b) if so required by a notice in writing given by the officer, in the case of any document specified in the notice, the original must be produced for inspection by him within such time (which shall not be less than 30 days) as may be specified in the notice.

(4) The officer may take copies of, or make extracts from, any document produced to him under subsection (2) or (3) above.

(5) A notice under subsection (2) above does not oblige the taxpayer to produce documents or furnish accounts or particulars relating to the conduct of any pending appeal by him.

(6) An appeal may be brought against any requirement imposed by a notice under subsection (2) above to produce any document or to furnish any accounts or particulars.

(7) An appeal under subsection (6) above must be brought within the period of 30 days beginning with the date on which the notice under subsection (2) above is given.

(8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.

(9) On an appeal under subsection (6) above section 50(6) to (8) of this Act shall not apply but the Commissioners may—

(a) if it appears to them that the production of the document or the furnishing of the accounts or particulars was reasonably required by the officer of the Board for the purpose mentioned in subsection (2) above, confirm the notice under that subsection so far as relating to the requirement; or

(b) if it does not so appear to them, set aside that notice so far as so relating.

(10) Where, on an appeal under subsection (6) above, the Commissioners confirm the notice under subsection (2) above so far as relating to any requirement, the notice shall have effect in relation to that requirement as if it had specified 30 days beginning with the determination of the appeal.

(11) Neither the taxpayer nor the officer of the Board shall be entitled to require a case to be stated under section 56 of this Act following the determination of an appeal under subsection (6) above.

(12) Where this section applies by virtue of a notice given under section 12AC(1) of this Act, any reference in this section to the taxpayer includes a reference to any predecessor or successor of his."

F63 188 . . . . . .

Textual Amendments

F63 S. 188 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

F64 189 . . . . . .

Textual Amendments

F64 S. 189 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

Determinations and assessments to protect revenue

190 Determination of tax where no return delivered.

After section 28B of the Management Act there shall be inserted the following section—

"**28C Determination of tax where no return delivered.**

(1) Where—

(a) a notice has been given to any person under section 8, 8A or 11 of this Act (the relevant section), and

(b) the required return is not delivered on or before the filing date,

an officer of the Board may make a determination of the amounts in which, to the best of his information and belief, the person who should have made the return is chargeable to income tax and capital gains tax for the year of assessment or (as the case may be) is chargeable to corporation tax for the accounting period.

(2) Notice of any determination under this section shall be served on the person in respect of whom it is made and shall state the date on which it is issued.

(3) Until such time (if any) as it is superseded by a self-assessment made under section 9 or 11AA of this Act (whether by the taxpayer or an officer of the Board) on the basis of information contained in a return under the relevant

section, a determination under this section shall have effect for the purposes of Parts VA, VI, IX and XI of this Act as if it were such a self-assessment.

(4) Where—

(a) an officer of the Board has commenced any proceedings for the recovery of any tax charged by a determination under this section; and

(b) before those proceedings are concluded, the determination is superseded by such a self-assessment as is mentioned in subsection (3) above,

those proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.

(5) No determination under this section, and no self-assessment superseding such a determination, shall be made otherwise than—

(a) before the end of the period of five years beginning with the filing date; or

(b) in the case of such a self-assessment, before the end of the period of twelve months beginning with the date of the determination.

(6) In this section "the filing date" means the day mentioned in section 8(1A), section 8A(1A) or, as the case may be, section 11(4) of this Act."

191 Assessment where loss of tax discovered.

(1) For section 29 of the Management Act there shall be substituted the following section—

"**29 Assessment where loss of tax discovered.**

(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a chargeable period—

(a) that any profits which ought to have been assessed to tax have not been assessed, or

(b) that an assessment to tax is or has become insufficient, or

(c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

(2) Where—

(a) the taxpayer has made and delivered a return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period, and

(b) the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,

the taxpayer shall not be assessed under that subsection in respect of the chargeable period there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

(3) Where the taxpayer has made and delivered a return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period, he shall not be assessed under subsection (1) above—

(a) in respect of the chargeable period mentioned in that subsection; and

(b) in the case of a return under section 8 or 8A, in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above is attributable to fraudulent or negligent conduct on the part of the taxpayer or a person acting on his behalf.

(5) The second condition is that at the time when an officer of the Board—

(a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period; or

(b) informed the taxpayer that he had completed his enquiries into that return,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(6) For the purposes of subsection (5) above, information is made available to an officer of the Board if—

(a) it is contained in the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period (the return), or in any accounts, statements or documents accompanying the return;

(b) it is contained in any claim made as regards the relevant chargeable period by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;

(c) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer, whether in pursuance of a notice under section 19A of this Act or otherwise; or

(d) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above—

(i) could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or

(ii) are notified in writing by the taxpayer to an officer of the Board.

(7) In subsection (6) above—

(a) any reference to the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period includes—

(i) a reference to any return of his under that section for either of the two immediately preceding chargeable periods; and

(ii) where the return is under section 8 and the taxpayer carries on a trade, profession or business in partnership, a reference to

any return with respect to the partnership under section 12AA of this Act for the relevant chargeable period or either of those periods; and

(b) any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf.

(8) An objection to the making of an assessment under this section on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the assessment.

(9) Any reference in this section to the relevant chargeable period is a reference to—

(a) in the case of the situation mentioned in paragraph (a) or (b) of subsection (1) above, the chargeable period mentioned in that subsection; and

(b) in the case of the situation mentioned in paragraph (c) of that subsection, the chargeable period in respect of which the claim was made.

(10) In this section "profits"—

(a) in relation to income tax, means income,

(b) in relation to capital gains tax, means chargeable gains, and

(c) in relation to corporation tax, means profits as computed for the purposes of that tax."

(2) This section, so far as it relates to partnerships whose trades, professions or businesses are set up and commenced before 6th April 1994, has effect as respects the year 1997-98 and subsequent years of assessment.

Payment of tax

192 Payments on account of income tax.

After Part V of the Management Act there shall be inserted the following section—

"**PART VA**

PAYMENT OF TAX

59A Payments on account of income tax.

(1) This section applies to any person (the taxpayer) as regards a year of assessment if as regards the immediately preceding year—

(a) he has been assessed to income tax under section 9 of this Act in any amount, and

(b) that amount (the assessed amount) exceeds the amount of any income tax which has been deducted at source, and

(c) the amount of the excess (the relevant amount) is not less than such amount as may be prescribed by regulations made by the Board, and

(d) the proportion which the relevant amount bears to the assessed amount is not less than such proportion as may be so prescribed.

(2) Subject to subsection (3) below, the taxpayer shall make two payments on account of his liability to income tax for the year of assessment—

(a) the first on or before the 31st January in that year, and

(b) the second on or before the next following 31st July;

and, subject to subsection (4) below, each of those payments on account shall be of an amount equal to 50 per cent. of the relevant amount.

(3) If, at any time before the 31st January next following the year of assessment, the taxpayer makes a claim under this subsection stating—

(a) his belief that he will not be assessed to income tax for that year, or that the amount in which he will be so assessed will not exceed the amount of income tax deducted at source, and

(b) his grounds for that belief,

each of the payments on account shall not be, and shall be deemed never to have been, required to be made.

(4) If, at any time before the 31st January next following the year of assessment, the taxpayer makes a claim under this subsection stating—

(a) his belief that the amount in which he will be assessed to income tax for that year will exceed the amount of income tax deducted at source by a stated amount which is less than the relevant amount, and

(b) his grounds for that belief,

the amount of each of the payments on account required to be made shall be, and shall be deemed always to have been, equal to 50 per cent. of the stated amount.

(5) Where the taxpayer makes a claim under subsection (3) or (4) above, there shall be made all such adjustments, whether by the repayment of amounts paid on account or otherwise, as may be required to give effect to the provisions of that subsection.

(6) Where the taxpayer fraudulently or negligently makes any incorrect statement in connection with a claim under subsection (3) or (4) above, he shall be liable to a penalty not exceeding the difference between—

(a) the amount which would have been payable on account if he had made a correct statement, and

(b) the amount of the payment on account (if any) made by him.

(7) The provisions of the Income Tax Acts as to the recovery of income tax shall apply to an amount falling to be paid on account of tax in the same manner as they apply to an amount of tax.

(8) In this section any reference to income tax deducted at source is a reference to—

(a) income tax deducted or treated as deducted from any income or treated as paid on any income, or

(b) any amount which, in respect of the year of assessment, is to be deducted at source under section 203 of the principal Act in a subsequent year, or is a tax credit to which section 231 of that Act applies."

193 Payment of income tax and capital gains tax.

After section 59A of the Management Act there shall be inserted the following section—

"**59B Payment of income tax and capital gains tax.**

(1) Subject to subsection (2) below, the difference between—

(a) the amount of income tax and capital gains tax contained in a person's self-assessment under section 9 of this Act for any year of assessment, and

(b) the aggregate of any payments on account made by him in respect of that year (whether under section 59A of this Act or otherwise) and any income tax which in respect of that year has been deducted at source,

shall be payable by him or (as the case may be) repayable to him as mentioned in subsection (3) or (4) below.

(2) The following, namely—

(a) any amount which, in the year of assessment, is deducted at source under section 203 of the principal Act in respect of a previous year, and

(b) any amount which, in respect of the year of assessment, is to be deducted at source under that section in a subsequent year, or is a tax credit to which section 231 of that Act applies,

shall be respectively deducted from and added to the aggregate mentioned in subsection (1)(b) above.

(3) In a case where the person—

(a) gave the notice required by section 7 of this Act within six months from the end of the year of assessment, but

(b) was not given notice under section 8 or 8A of this Act until after the 31st October next following that year,

the difference shall be payable or repayable at the end of the period of three months beginning with the day on which the notice under section 8 or 8A was given.

(4) In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment.

(5) Where a person's self-assessment under section 9 of this Act is amended under section 9(4), section 28A(2), (3) or (4) or section 30B(2) of this Act, any amount of tax which is payable or repayable by virtue of the amendment shall, subject to section 55(6) and (9) of this Act, be payable or (as the case may be) repayable—

(a) in a case where notice of the amendment is given after, or less than 30 days before, the day given by subsection (3) or (4) above, on or before the day following the end of the period of 30 days beginning with the day on which notice is given; and

(b) in any other case, on or before the day given by subsection (3) or (4) above.

(6) Any amount of income tax or capital gains tax which is payable by virtue of an assessment made under section 29 of this Act shall be payable on the day following the end of the period of 30 days beginning with the day on which the notice of assessment is given.

(7) In this section any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income."

194 Surcharges on unpaid income tax and capital gains tax.

After section 59B of the Management Act there shall be inserted the following section—

"**59C Surcharges on unpaid income tax and capital gains tax.**

(1) This section applies in relation to any income tax or capital gains tax which has become payable by a person (the taxpayer) in accordance with section 55 or 59B of this Act.

(2) Where any of the tax remains unpaid on the day following the expiry of 28 days from the due date, the taxpayer shall be liable to a surcharge equal to 5 per cent. of the unpaid tax.

(3) Where any of the tax remains unpaid on the day following the expiry of 6 months from the due date, the taxpayer shall be liable to a further surcharge equal to 5 per cent. of the unpaid tax.

(4) Where the taxpayer has incurred a penalty under section 7, 93(5) or 95 of this Act, no part of the tax by reference to which that penalty was determined shall be regarded as unpaid for the purposes of subsection (2) or (3) above.

(5) An officer of the Board may impose a surcharge under subsection (2) or (3) above; and notice of the imposition of such a surcharge—
(a) shall be served on the taxpayer, and
(b) shall state the day on which it is issued and the time within which an appeal against the imposition of the surcharge may be brought.

(6) A surcharge imposed under subsection (2) or (3) above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the end of the period of 30 days beginning with the day on which the surcharge is imposed until payment.

(7) An appeal may be brought against the imposition of a surcharge under subsection (2) or (3) above within the period of 30 days beginning with the date on which the surcharge is imposed.

(8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (7) above as they have effect in relation to an appeal against an assessment to tax.

(9) On an appeal under subsection (7) above section 50(6) to (8) of this Act shall not apply but the Commissioners may—
(a) if it appears to them that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or
(b) if it does not so appear to them, confirm the imposition of the surcharge.

(10) Inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.

(11) The Board may in their discretion—

(a) mitigate any surcharge under subsection (2) or (3) above, or

(b) stay or compound any proceedings for the recovery of any such surcharge,

and may also, after judgment, further mitigate or entirely remit the surcharge.

(12) In this section—

"the due date", in relation to any tax, means the date on which the tax becomes due and payable;

"the period of default", in relation to any tax which remained unpaid after the due date, means the period beginning with that date and ending with the day before that on which the tax was paid."

[F65]195 . . . . . .

Textual Amendments

F65 S. 195 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

Miscellaneous and supplemental

196 Management: other amendments.

Schedule 19 to this Act (which makes other amendments relating to the management of tax) shall have effect.

[F66]197 . . . . . .

Textual Amendments

F66 S. 197 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

[F67]198 . . . . . .

Textual Amendments

F67 S. 198 repealed and superseded (1.5.1995) by 1995 c. 4, ss. 116, 162, Sch. 21, **Sch. 29 Pt. VIII(14)**

199 Interpretation and commencement of Chapter III.

(1) In this Chapter "the Management Act" means the [M36]Taxes Management Act 1970.

(2) Unless the contrary intention appears, this Chapter—

(a) so far as it relates to income tax and capital gains tax, has effect as respects the year 1996-97 and subsequent years of assessment, and

(b) so far as it relates to corporation tax, has effect as respects accounting periods ending on or after the appointed day.

(3) For the purposes of this Chapter the appointed day is such day, not earlier than 1st April 1996, as the Treasury may by order appoint.

Subordinate Legislation Made

P3 S. 199(3) power exercised: 1.7.1999 appointed by S.I. 1998/3173, **art. 2**

Marginal Citations

M36 1970 c.9.

CHAPTER IV

CHANGES FOR FACILITATING SELF-ASSESSMENT

Assessment under Cases I and II of Schedule D

200 Assessment on current year basis.

For section 60 of the Taxes Act 1988 there shall be substituted the following section—

"**60 Assessment on current year basis.**

(1) Subject to subsection (2) below and section 63A, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year of assessment.

(2) Where, in the case of a trade, profession or vocation, a basis period for the year of assessment is given by subsection (3) below or sections 61 to 63, the profits or gains of that period shall be taken to be the profits or gains of the year.

(3) Subject to sections 61 to 63, the basis period for a year of assessment is as follows—

(a) if the year is the first year of assessment in which there is an accounting date which falls not less than 12 months after the commencement date, the period of 12 months ending with that accounting date; and

(b) if there is a basis period for the immediately preceding year and that basis period is not given by section 61, the period of 12 months beginning immediately after the end of that basis period.

(4) In the case of a person who, if he had not died, would under the provisions of this section and sections 61 to 63A have become chargeable to income tax for any year, the tax which would have been so chargeable—

(a) shall be assessed and charged on his personal representatives, and

(b) shall be a debt due from and payable out of his estate.

(5) In this section and sections 61 to 63—

"accounting date", in relation to a year of assessment, means a date in the year to which accounts are made up or, where there are two or more such dates, the latest of those dates;

"the commencement date" and "the commencement year" mean respectively the date on which and the year of assessment in which the trade, profession or vocation is set up and commenced."

201 Basis of assessment at commencement.

For section 61 of the Taxes Act 1988 there shall be substituted the following section—

"**61 Basis of assessment at commencement.**

(1) Notwithstanding anything in section 60, where the year of assessment is the commencement year, the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D shall be made on the profits or gains arising in the year.

(2) Subject to section 63, where the year of assessment is the year next following the commencement year and—

(a) there is an accounting date in the year and the period beginning with the commencement date and ending with the accounting date is a period of less than 12 months; or

(b) the basis period for the year would, apart from this subsection, be given by section 62(2) and the period beginning with the commencement date and ending with the new date in the year is a period of less than 12 months,

the basis period for the year is the period of 12 months beginning with the commencement date.

(3) In this section "the new date" has the same meaning as in section 62."

202 Change of basis period.

For section 62 of the Taxes Act 1988 there shall be substituted the following section—

"**62 Change of basis period.**

(1) Subsection (2) below applies where, in the case of a trade, profession or vocation—

(a) an accounting change, that is, a change from one accounting date ("the old date") to another ("the new date"), is made or treated as made in a year of assessment; and

(b) either section 62A applies or the year of assessment is the year next following or next but one following the commencement year.

(2) The basis period for the year of assessment is as follows—

(a) if the year is the year next following the commencement year or the relevant period is a period of less than 12 months, the period of 12 months ending with the new date in the year; and

(b) if the relevant period is a period of more than 12 months, that period;

and in this subsection "the relevant period" means the period beginning immediately after the end of the basis period for the preceding year and ending with the new date in the year.

(3) Where subsection (2) above does not apply as respects an accounting change made or treated as made in a year of assessment ("the first year"), this section and section 62A shall have effect in relation to the next following year ("the second year") as if the change had not been made or treated as made.

(4) As a consequence of subsection (3) above—

(a) an accounting change shall be treated as made in the second year if the date or, as the case may be, the latest date in that year to which accounts are made up is a date other than the date of the end of the basis period for the first year; and

(b) no such change shall be treated as made in the second year if that date is the date of the end of that period.

(5) For the purposes of this section an accounting change is made in the first year of assessment in which accounts are not made up to the old date, or accounts are made up to the new date, or both."

203 Conditions for such a change.

After section 62 of the Taxes Act 1988 there shall be inserted the following section—

"**62A Conditions for such a change.**

(1) This section applies in relation to an accounting change if the following are fulfilled, namely—

(a) the first and second conditions mentioned below, and

(b) either the third or the fourth condition so mentioned.

(2) The first condition is that the first accounting period ending with the new date does not exceed 18 months.

(3) The second condition is that notice of the accounting change is given to an officer of the Board on or before the 31st January next following the year of assessment.

(4) The third condition is that no accounting change as respects which section 62(2) has applied has been made or treated as made in any of the five years immediately preceding the year of assessment.

(5) The fourth condition is that—

(a) the notice required by the second condition sets out the reasons for which the change is made; and

(b) either the officer is satisfied that the change is made for bona fide commercial reasons or he does not, within 60 days of receiving the notice, give notice to the person carrying on the trade, profession or vocation that he is not so satisfied.

(6) An appeal may be brought against the giving of a notice under subsection (5)(b) above within the period of 30 days beginning with the date on which the notice is given.

(7) Subject to subsection (8) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.

(8) On an appeal under subsection (6) above section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—

(a) if they are satisfied that the change is made for bona fide commercial reasons, set the notice under subsection (5)(b) above aside; or

(b) if they are not so satisfied, confirm that notice.

(9) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of subsections (5) and (8) above.

(10) In this section—

(a) "accounting period" means a period for which accounts are made up, and

(b) expressions which are also used in section 62 have the same meanings as in that section."

204 Basis of assessment on discontinuance.

For section 63 of the Taxes Act 1988 there shall be substituted the following section—

"**63 Basis of assessment on discontinuance.**

Where a trade, profession or vocation is permanently discontinued in a year of assessment other than the commencement year, the basis period for the year shall be the period beginning—

(a) where the year is the year next following the commencement year, immediately after the end of the commencement year, and

(b) in any other case, immediately after the end of the basis period for the preceding year of assessment,

and (in either case) ending with the date on which the trade, profession or vocation is permanently discontinued."

205 Overlap profits and overlap losses.

After section 63 of the Taxes Act 1988 there shall be inserted the following section—

"**63A Overlap profits and overlap losses.**

(1) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 62(2)(b), a deduction shall be made in

computing the profits or gains of that year of an amount equal to that. given by the formula in subsection (2) below.

(2) The formula referred to in subsection (1) above is—

$$A \text{ x } \frac{B - C}{D}$$

where—

A = the aggregate of any overlap profits less the aggregate of any amounts previously deducted under subsection (1) above;

B = the number of days in the basis period;

C = the number of days in the year of assessment;

D = the aggregate of the overlap periods of any overlap profits less the aggregate number of days given by the variable "B — C" in any previous applications of this subsection.

(3) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 63, a deduction shall be made in computing the profits or gains of that year of an amount equal to—

(a) the aggregate of any overlap profits, less

(b) the aggregate of any amounts deducted under subsection (1) above.

(4) Where, in the case of any trade, profession or vocation, an amount of a loss would, apart from this subsection, fall to be included in the computations for two successive years of assessment, that amount shall not be included in the computation for the second of those years.

(5) In this section—

"overlap profit" means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment; and

"overlap period", in relation to an overlap profit, means the number of days in the period in which the overlap profit arose."

Assessment under Cases III to VI of Schedule D

206 Basis of assessment under Case III.

For section 64 of the Taxes Act 1988 there shall be substituted the following section—

"**64 Case III assessments.**

Income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year of assessment, and shall be paid on the actual amount of that income, without any deduction."

207 Basis of assessment under Cases IV and V.

(1) In subsection (1) of section 65 of that Act (Case IV and V assessments: general), the words "and sections 66 and 67" and the words "the year preceding" shall cease to have effect.

(2) In subsection (3) of that section—

(a) after the words "Cases I and II of Schedule D" there shall be inserted the words " (including sections 60 to 63A and 113) "; and

(b) the words from "Nothing in this subsection" to the end shall cease to have effect.

(3) In subsection (5) of that section, the words "subject to sections 66 and 67" and the words "the year preceding", in each place where they occur, shall cease to have effect.

(4) Sections 66 and 67 of that Act (special rules for fresh income and special rules where source of income disposed of or yield ceases) shall cease to have effect.

(5) In subsection (1) of section 68 of that Act (special rules where property etc. situated in Republic of Ireland), for the words "sections 65 or 66" there shall be substituted the words " section 65 ".

(6) In its application to trades, professions or vocations set up and commenced before 6th April 1994, subsection (2) above has effect as respects the year 1997-98 and subsequent years of assessment.

208 Basis of assessment under Case VI.

For section 69 of the Taxes Act 1988 there shall be substituted the following section—

"**69 Case VI assessments.**

Income tax under Case VI of Schedule D shall be computed on the full amount of the profits or gains arising in the year of assessment."

Loss relief

209 Loss relief: general.

(1) For subsections (1) and (2) of section 380 of the Taxes Act 1988 (set-off against general income) there shall be substituted the following subsections—

"(1) Where in any year of assessment any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

(a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or

(b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

(2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection."

(2) In subsection (2) of section 381 of that Act (further relief for individuals for losses in early years of trade), for the words "an amount of the claimant's income equal to the amount of the loss" there shall be substituted the words " so much of the claimant's income as is equal to the amount of the loss or, where it is less than that amount, the whole of that income ".

(3) For subsections (3) and (4) of section 382 of that Act (provisions supplementary to sections 380 and 381) there shall be substituted the following subsections—

"(3) Subject to subsection (4) below, for the purposes of sections 380 and 381, the amount of a loss sustained in a trade, profession or vocation shall be computed in like manner and in respect of the same period as the profits or gains arising or accruing from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.

(4) An amount of a loss which, apart from this subsection, would fall to be included in the computations for two successive years of assessment shall not be included in the computation for the second of those years."

(4) For subsection (1) of section 385 of that Act (carry-forward against subsequent profits) there shall be substituted the following subsection—

"(1) Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed as mentioned in subsections (3) and (4) of section 382) in respect of which relief has not been wholly given either under section 380 or any provision of the Income Tax Acts—

(a) he may make a claim requiring that any part of the loss for which relief has not been so given shall be set off for the purposes of income tax against the income of the trade, profession or vocation for subsequent years of assessment; and

(b) where he makes such a claim, the income from the trade, profession or vocation in any subsequent year of assessment shall be treated as reduced by that part of the loss, or by so much of that part as cannot, on that claim, be relieved against such income of an earlier year of assessment."

(5) Subsections (3) and (8) of that section shall cease to have effect.

(6) In subsection (1) of section 388 of that Act (carry-back of terminal losses) for the words "the three years of assessment last preceding that in which the discontinuance occurs" there shall be substituted the words " the year of assessment in which the discontinuance occurs and the three years last preceding it ".

(7) In their application to trades, professions or vocations set up and commenced before 6th April 1994, subsections (3) to (5) above have effect as respects the year 1997-98 and subsequent years of assessment.

Modifications etc. (not altering text)
C10 S. 209 amended (*retrospectively*) by 1995 c. 4, **s. 118**

210 Relief for losses on unquoted shares.

(1) For subsections (1) and (2) of section 574 of the Taxes Act 1988 (relief for individuals for losses on unquoted shares) there shall be substituted the following subsections—

"(1) Where an individual who has subscribed for shares in a qualifying trading company incurs an allowable loss (for capital gains tax purposes) on the disposal of the shares in any year of assessment, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

(a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or

(b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

Where such relief is given in respect of the loss or any part of it, no deduction shall be made in respect of the loss or (as the case may be) that part under the 1992 Act.

(2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection; and any relief claimed under either paragraph in respect of any income shall be given in priority to any relief claimed in respect of that income under section 380 or 381."

(2) This section has effect as respects the year 1994-95 and subsequent years of assessment.

Modifications etc. (not altering text)
C11 S. 210 amended (*retrospectively*) by 1995 c. 4, **s. 119**

Capital allowances

211 Income tax allowances and charges in taxing a trade etc.

F68(1) . . . . . .

(2) Subject to section 214(7) below, this section and sections 212 to 214 below, in their application to trades, professions or vocations set up and commenced before 6th April 1994 or employments or offices entered into before that date, have effect as respects the year 1997-98 and subsequent years of assessment.

Textual Amendments

F68 S. 211(1) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

F69212 . . . . . .

Textual Amendments

F69 S. 212 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

F70213 . . . . . .

Textual Amendments

F70 S. 213 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

214 Amendments of other enactments.

(1) In the Taxes Act 1988, the following provisions shall cease to have effect, namely—

(a) in section 96 (farming and market gardening: relief for fluctuating profits), in subsection (7), paragraph (b);

(b) section 383 (extension of right to set-off to capital allowances);

(c) in section 384 (restrictions on right of set-off), in subsection (1), the words "(including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss)", and in subsection (2), the words "or an allowance in respect of expenditure incurred", paragraph (b) and the word "or" immediately preceding that paragraph;

(d) in section 388 (carry-back of terminal losses), in subsection (6), paragraphs (b) and (d) and the word "and" immediately preceding paragraph (d), and in subsection (7), the words from the beginning to "an earlier year: and"; and

(e) in section 389 (supplementary provisions relating to carry-back of terminal losses), subsections (5) to (7).

(2) In subsection (6) of section 384 of that Act—

(a) for the words "There shall be disregarded for the purposes of section 383 any allowances" there shall be substituted the words " There shall be disregarded for the purposes of sections 380 and 381 so much of any loss as derives from any allowances "; and

(b) for the words "the year of the loss (as defined in section 383)" there shall be substituted the words " the year of assessment in which the loss was sustained ".

(3) In subsection (1) of section 397 of that Act (restriction of relief in case of farming and market gardening)—

(a) after the word "loss", in the second place where it occurs, there shall be inserted the words " , computed without regard to capital allowances, "; and

(b) the words from "and where" to the end shall cease to have effect.

F71(4) . . . . . .

F71(5) . . . . . .

F71(6) . . . . . .

(7) Subsection (1)(a) above—

(a) except in its application to a trade set up and commenced on or after 6th April 1994, has effect where the first of the two years of assessment to which the claim relates is the year 1996-97 or any subsequent year, and

(b) in its application to a trade so set up and commenced, has effect where the first of those two years of assessment is the year 1995-96 or any subsequent year.

Textual Amendments

F71 S. 214(4)-(6) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

Miscellaneous and supplemental

215 Treatment of partnerships.

(1) For section 111 of the Taxes Act 1988 there shall be substituted the following section—

"**111 Treatment of partnerships.**

(1) Where a trade or profession is carried on by two or more persons in partnership, the partnership shall not, unless the contrary intention appears, be treated for the purposes of the Tax Acts as an entity which is separate and distinct from those persons.

(2) So long as a trade or profession ("the actual trade or profession") is carried on by persons in partnership, and each of those persons is chargeable to income tax, the profits or gains or losses arising from the trade or profession shall be computed for the purposes of income tax in like manner as if the partnership were an individual.

(3) A person's share in the profits or gains or losses of the partnership which for any period are computed in accordance with subsection (2) above shall be determined according to the interests of the partners during that period; and income tax shall be chargeable or, as the case may require, loss relief may be claimed as if—

(a) that share derived from a trade or profession ("the deemed trade or profession") carried on by the person alone;

(b) the deemed trade or profession was set up and commenced by him at the time when he became a partner or, where the actual trade or profession was previously carried on by him alone, the time when the actual trade was set up and commenced; and

(c) the deemed trade or profession is permanently discontinued by him at the time when he ceases to be a partner or, where the actual trade or profession is subsequently carried on by him alone, the time when the actual trade or profession is permanently discontinued.

(4) Where—

(a) subsections (2) and (3) above apply in relation to the profits or gains or losses of a trade or profession carried on by persons in partnership, and

(b) other income accrues to those persons by virtue of their being partners,

that other income shall be chargeable to tax by reference to the same periods as if it were profits or gains arising from the trade or profession.

(5) Subsections (1) to (3) above apply, with the necessary modifications, in relation to a business as they apply in relation to a trade."

(2) In section 114 of that Act (special rules for computing profits or losses), after the word "trade"—

(a) in subsection (1), in each place where it occurs;

(b) in subsection (2); and

(c) in subsection (3), in the first place where it occurs,

there shall be inserted the words " profession or business ".

(3) The following provisions of that Act shall cease to have effect, namely—

(a) in section 114, in subsection (3), the words from "except that" to the end, and subsection (4);

(b) in section 115 (provisions supplementary to section 114), subsections (1) to (3) and (6); and

(c) in section 277 (personal reliefs: partnerships), in subsection (1), the words "Subject to subsection (2) below", paragraph (c) and the word "and" immediately preceding that paragraph, and subsection (2).

(4) This section and section 216 below—

(a) except in their application to partnerships mentioned in subsection (5) below, have effect as respects the year 1997-98 and subsequent years of assessment, and

(b) in its application to partnerships so mentioned, have effect as respects the year 1994-95 and subsequent years of assessment.

(5) The partnerships referred to in subsection (4) above are partnerships—

(a) whose trades, professions or businesses are set up and commenced on or after 6th April 1994; [F72]. . .

[F72](b) . . . . . .

Textual Amendments

F72 S. 215(5)(b) and the preceding word "and" repealed (1.5.1995 with effect as mentioned in s. 125(1) of the repealing Act for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(16)**, Note 4

Modifications etc. (not altering text)
C12 S. 215 amended (*retrospectively*) by 1995 c. 4, **s. 117**

216 Effect of change in ownership of trade, profession or vocation.

(1) For subsection (2) of section 113 of the Taxes Act 1988 (effect of change in ownership of trade, profession or vocation) there shall be substituted the following subsection—

"(2) Where—

(a) there is such a change as is mentioned in subsection (1) above, and

(b) a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it,

subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced."

(2) Subsections (3) to (5) of that section and, in subsection (6) of that section, the words from "and where" to the end shall cease to have effect.

(3) The following provisions of that Act shall cease to have effect, namely—

(a) in section 96 (farming and market gardening: relief for fluctuating profits), in subsection (6) the words from "except that" to the end;

(b) in section 380 (set-off against general income), subsection (3);

(c) in section 381 (further relief in early years of trade), subsection (6);

(d) in section 384 (restrictions on right of set-off), subsection (5);

(e) in section 385 (carry-forward against subsequent profits), subsections (2) and (5);

(f) in section 386 (carry-forward where business transferred to a company), subsection (4); and

(g) in section 389 (supplementary provisions relating to carry-back of terminal losses), subsection (3).

(4) For subsection (4) of section 389 of that Act, there shall be substituted the following subsection—

"(4) For the purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 111 or 113."

(5) Subsection (3)(a) above—

(a) except in its application to a trade set up and commenced on or after 6th April 1994, has effect where the first of the two years of assessment to which the claim relates is the year 1996-97 or any subsequent year, and

(b) in its application to a trade so set up and commenced, has effect where the first of those two years of assessment is the year 1995-96 or any subsequent year.

217 Double taxation relief in respect of overlap profits.

(1) In subsection (1) of section 804 of the Taxes Act 1988 (relief against income tax in respect of income arising in years of commencement), for the words "any income

arising in the years of commencement" there shall be substituted the words " any income which is an overlap profit ".

(2) For subsection (5) of that section there shall be substituted the following subsections—

"(5) Subsections (5A) and (5B) below apply where—

(a) credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income which is an overlap profit ("the original income"), and

(b) the original income or any part of it contributes to an amount which, by virtue of section 63A(1) or (3), is deducted in computing the profits or gains of a subsequent year of assessment ("the subsequent year").

(5A) The following shall be set off one against the other, namely—

(a) the difference between—

(i) the amount of the credit which, under this Part (including this section), has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (5) above, and

(ii) the amount of the credit which, apart from this section, would have been so allowed; and

(b) the amount of credit which, on the assumption that no amount were deducted by virtue of section 63A(1) or (3), would be allowable under this Part against income tax in respect of income arising in the subsequent year from the same source as the original income.

(5B) The person chargeable in respect of the income (if any) arising in the subsequent year from the same source as the original income shall—

(a) if the amount given by paragraph (a) of subsection (5A) above exceeds that given by paragraph (b) of that subsection, be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax on it at the basic rate is equal to the excess; and

(b) if the amount given by paragraph (b) of subsection (5A) above exceeds that given by paragraph (a) of that subsection, be allowed for that year under this Part an amount of credit equal to the excess.

(5C) For the purposes of subsections (5) to (5B) above, it shall be assumed that, where an amount is deducted by virtue of section 63A(1), each of the overlap profits included in the aggregate of such profits contributes to that amount in the proportion which that overlap profit bears to that aggregate."

(3) In subsection (8) of that section—

(a) immediately before the definition of "overseas tax" there shall be inserted the following definition—

"" "overlap profit" means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment;"; and

(b) the definitions of "non-basis period" and "years of commencement" and the words "references to the enactments relating to cessation are references to sections 63, 67 and 113" shall cease to have effect."

218 Commencement, transitional provisions and savings.

(1) Unless the contrary intention appears, this Chapter—

(a) except in its application to a trade set up and commenced on or after 6th April 1994 or income from a source arising to a person on or after that date, has effect as respects the year 1996-97 and subsequent years of assessment, and

(b) in its application to a trade so set up and commenced or income from a source so arising, has effect as respects the year 1994-95 and subsequent years of assessment.

[F73(1A) In a case where—

(a) a trade is set up and commenced by a company, and

(b) it is not set up and commenced before 6th April 1994,

sections 213(4) and (8) and 214(4) and (6) have effect only if it is set up and commenced on or after 6th April 1995.**]**

(2) Any reference in subsection (1) above to a trade includes a reference to a profession, vocation, employment or office.

(3) Where the first underwriting year of the underwriting business of a member of Lloyd's is the year 1994, subsection (1) above shall have effect in relation to that business as if it had been set up and commenced on 6th April 1994.

(4) Where, as respects income from any source, income tax is to be charged under Case IV or V of Schedule D by reference to the amounts of income received in the United Kingdom, the source shall be treated for the purposes of subsection (1) above as arising on the date on which the first amount of income is so received.

(5) This Chapter shall have effect subject to the transitional provisions and savings contained in Schedule 20 to this Act.

Textual Amendments

F73 S. 218(1A) inserted (*retrospectively*) by 1995 c. 4, **s. 102(2)**

CHAPTER V

LLOYD'S UNDERWRITERS: CORPORATIONS ETC.

Modifications etc. (not altering text)

C13 Pt. IV Chapter V (ss. 219-230) modified (1.12.1997) by S.I. 1997/2681, **reg. 3(2)(a)**

C14 Pt. IV Chapter V (ss. 219-230) applied (1.5.1995) by 1995 c. 4, **s. 129(4)(6)**
Pt. IV Chapter V (ss. 219-230) applied (1.5.1995) by 1995 c. 4, **s. 127(16)(a)(19)**

Main provisions

219 Taxation of profits.

(1) Corporation tax for any accounting period on the profits arising from a corporate member's underwriting business shall be computed on the profits of that accounting period.

(2) As respects the profits arising to a corporate member for any accounting period directly from its membership of one or more syndicates, or from assets forming part of a **[**F74premium**]** trust fund—

(a) the aggregate of those profits shall be computed for tax purposes under Case I of Schedule D; and

(b) accordingly, no part of those profits shall be computed for those purposes under any other Schedule or any other Case of Schedule D.

(3) **[**F75Subject to subsection (4A) below,**]** the profits arising to a corporate member for any accounting period—

(a) from assets forming part of an ancillary trust fund; or

(b) from assets employed by it in, or in connection with, its underwriting business,

shall be computed for tax purposes under Case I of Schedule D if, and to the extent that, they do not fall to be computed for those purposes under any other Schedule or any other Case of Schedule D.

(4) Where the profits arising for any accounting period from the assets of a corporate member's **[**F74premium**]** trust fund include **[**F76UK distributions**]**, subsection (2) above shall apply in relation to those distributions F77. . . notwithstanding anything in section 11(2)(a) or 208 of the Taxes Act 1988.

[F78(4A) Notwithstanding anything in section 11(2)(a) or 208 of the Taxes Act 1988, UK distributions in respect of any assets of a corporate member which are mentioned in paragraph (a) or (b) of subsection (3) above—

(a) shall be taken into account in computing profits of the corporate member for tax purposes; and

(b) shall be so taken into account under Case I of Schedule D (and not under any other Schedule or any other Case of Schedule D).

(4B) Section 231(1) of the Taxes Act 1988 (entitlement to tax credit) shall not apply where the distribution there mentioned is a distribution in respect of any asset of a corporate member's **[**F74premium**]** trust fund.

(4C) In this section "UK distributions" means dividends or other distributions of a company resident in the United Kingdom.**]**

(5) In section 20(2) of the Taxes Act 1988 (Schedule F), after the words "section 171 of the Finance Act 1993" there shall be inserted the words " or section 219 of the Finance Act 1994 ".

Textual Amendments

F74 Words in s. 219(2)(4)(4B) substituted (1.12.2001) by S.I. 2001/3629, **art. 87(a)**

F75 Words in s. 219(3) inserted (31.7.1997 with effect as mentioned in s. 22(7) of the amending Act) by 1997 c. 58, **s. 22(2)**

F76 Words in s. 219(4) substituted (31.7.1997 with effect as mentioned in s. 22(7) of the amending Act) by 1997 c. 58, **s. 22(3)(a)**

F77 Words in s. 219(4) repealed (31.7.1997 with effect as mentioned in s. 22(7) and the Note to Sch. 8 Pt. II(5) of the repealing Act) by 1997 c. 58, ss. 22(3)(b), 52, **Sch. 8 Pt. II(5)**

F78 S. 219(4A)-(4C) inserted (31.7.1997 with effect as mentioned in s. 22(7) of the amending Act) by 1997 c. 58, **s. 22(4)**

220 Accounting period in which certain profits or losses arise.

(1) For the purposes of section 219 above and all other purposes of the Corporation Tax Acts, the profits or losses arising to a corporate member in any accounting period directly from its membership of one or more syndicates, or from assets forming part of a **[**F79premium**]** trust fund, shall be taken to be—

(a) if two underwriting years each fall partly within that period, the aggregate of the apportioned parts of those profits or losses in those years; and

(b) if a single underwriting year falls wholly or partly within that period, those profits or losses or (as the case may be) the apportioned part of those profits or losses in that year.

(2) Subject to the provisions of this Chapter, for the purposes of subsection (1) above and all other purposes of the Corporation Tax Acts—

(a) the profits or losses arising to a corporate member in any underwriting year directly from its membership of one or more syndicates shall be taken to be those of any previous year or years which are declared in that year; and

(b) the profits or losses arising to a corporate member in any underwriting year from assets forming part of a **[**F79premium**]** trust fund shall be taken to be those allocated under the rules or practice of Lloyd's to any previous year or years the profits or losses of which are declared in that year.

(3) In this section "apportioned part", in relation to the profits or losses of an underwriting year, means a part apportioned under section 72 of the Taxes Act 1988.

Textual Amendments

F79 Words in s. 220(1)(2)(b) substituted (1.12.2001) by S.I. 2001/3629, **art. 87(b)**

221 Assessment and collection of tax.

(1) Subject to subsection (2) below, Schedule 19 (Lloyd's underwriters: assessment and collection of tax) to the M37Finance Act 1993 ("the 1993 Act") shall apply in relation to corporate members as it applies in relation to other members.

(2) In its application to a corporate member, paragraph 13 of that Schedule shall have effect as if—

(a) in sub-paragraph (3)(b), the reference to the members' agent of each member were a reference to each corporate member itself;

F80(b) . . . . . .

(c) in sub-paragraph (4), the reference to section 824 of the Taxes Act 1988 were a reference to section 826 of that Act (interest on tax overpaid); F81. . .

F81(d) . . . . . .

Textual Amendments

F80 S. 221(2)(b) repealed (31.7.1997 with effect as mentioned in the Note to Sch. 8 Pt. II(5) of the repealing Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(5)**

F81 S. 221(2)(d) and the preceding word "and " repealed (31.7.1997 with effect as mentioned in the Note to Sch. 8 Pt. II(5) of the repealing Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(5)**

Marginal Citations

M37 1993 c.34.

Trust funds

222 [F82Premium] trust funds.

(1) For the purposes of the Corporation Tax Acts—

(a) a corporate member shall be treated as absolutely entitled as against the trustees to the assets forming part of a **[**F82premium**]** trust fund belonging to it; and

(b) where a deposit required by a regulatory authority in a country or territory outside the United Kingdom is paid out of such a fund, the money so paid shall be treated as still forming part of that fund.

(2) Where an asset forms part of a corporate member's **[**F82premium**]** trust fund at the beginning of any underwriting year, for the purposes of the Corporation Tax Acts—

(a) the trustees of the fund shall be treated as acquiring it on that day, and

(b) they shall be treated as paying in respect of the acquisition an amount equal to the value of the asset at the time of the acquisition.

(3) Where an asset forms part of a corporate member's **[**F82premium**]** trust fund at the end of any underwriting year, for the purposes of the Corporation Tax Acts—

(a) the trustees of the fund shall be treated as disposing of it on that day, and

(b) they shall be treated as obtaining in respect of the disposal an amount equal to the value of the asset at the time of the disposal.

F83(4) . . . . . .

F83(5) . . . . . .

F84(6) . . . . . .

F84(7) . . . . . .

Textual Amendments

F82 Words in s. 222(1)(a)(2)(3) and sidenote substituted (1.12.2001) by S.I. 2001/3629, **art. 87(c)**

F83 S. 222(4)(5) repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. VI(10)**; S.I. 1997/991, **art. 2**

F84 S. 222(06)(07) repealed (29.4.1996 with effect as mentioned in s. 154(9) of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(18)**, Note

223 Ancillary trust funds.

A corporate member shall be treated for the purposes of the Corporation Tax Acts as absolutely entitled as against the trustees to the assets forming part of an ancillary trust fund belonging to it.

Modifications etc. (not altering text)
C15 S. 223 applied (with modifications) (1.12.1997) by S.I. 1997/2681, **reg. 5(1)**

Other special cases

F85 224 . . . . . .

Textual Amendments
F85 S. 224 repealed (28.7.2000 with effect as mentioned in s. 107(12)(c) of the repealing Act) by 2000 c. 17, ss. 107(11), 156, **Sch. 40 Pt. II(9)**

225 Stop-loss and quota share insurance.

(1) In computing for the purposes of corporation tax the profits of a corporate member's underwriting business, each of the following shall be deductible as an expense, namely—

(a) any premium payable by it under a stop-loss insurance, and any repayment of insurance money paid to it under such an insurance; and

(b) any amount payable by it under a quota share contract, irrespective of the purpose for which the contract was entered into.

(2) Subject to subsection (3) below, the following provisions apply where any insurance money is payable to a corporate member under a stop-loss insurance in respect of a loss in its underwriting business—

(a) if the underwriting year in which the loss is declared falls within two or more accounting periods, the apportioned part of the insurance money shall be treated as a trading receipt in computing the profits arising from the business for each of those periods; and

(b) if the underwriting year in which the loss is declared falls within a single accounting period, the insurance money shall be treated as a trading receipt in computing the profits arising from the business for that period.

(3) Where, as respects the payment of any such insurance money as is mentioned in subsection (2) above—

(a) the inspector is not notified of the payment at least 30 days before the time after which any assessment or further assessment of profits for any of the accounting periods or (as the case may be) the accounting period is precluded by section 34 of the Management Act (ordinary time limit), and

(b) the inspector is not entitled, after that time, to make any such assessment or further assessment by virtue of section 36 (fraudulent or negligent conduct) of that Act,

that subsection shall have effect in relation to the apportioned part of that insurance money or (as the case may be) that insurance money as if, instead of that accounting period, it referred to the accounting period in which the payment is made.

(4) In this section—

"apportioned part", in relation to any insurance money, means a part apportioned under section 72 of the Taxes Act 1988;

"quota share contract" means any contract between a corporate member and another person which—

(a) is made in accordance with the rules or practice of Lloyd's; and

(b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which it is a member.

Miscellaneous

226 Provisions which are not to apply.

(1) Sections 92 to 95 of the 1993 Act (corporation tax: currency to be used) shall not apply for the purposes of computing for the purposes of corporation tax the profits or losses of a corporate member's underwriting business.

(2) No asset forming part of or liability attaching to a **[**F86premium**]** trust fund of a corporate member shall be a qualifying asset or liability for the purposes of Chapter II of Part II of the 1993 Act (exchange gains and losses); and no contract forming part of such a fund shall be a currency contract for those purposes.

(3) No contract or option forming part of a **[**F86premium**]** trust fund of a corporate member shall be a qualifying contract for the purposes of Chapter II of this Part of this Act (interest rate and currency contracts and options).

Textual Amendments

F86 Words in s. 226(2)(3) substituted (1.12.2001) by S.I. 2001/3629, **art. 87(d)**

227 Cessation: final underwriting year.

(1) This section applies where a corporate member ceases to carry on its underwriting business, whether by reason of being wound up or otherwise.

(2) Subject to the provisions of any regulations made by the Board—

(a) the member's final underwriting year shall be that in which its deposit at Lloyd's is paid over to it or its liquidator, and

(b) the member's underwriting business shall be treated as continuing until the end of that year.

Modifications etc. (not altering text)

C16 S. 227 excluded (1.12.1997) by S.I. 1997/2681, **reg. 4(2)**

228 Lloyd's underwriters: individuals.

(1) Chapter III of Part II of the 1993 Act (Lloyd's underwriters: individuals) shall have effect subject to the amendments specified in Schedule 21 to this Act.

(2) The following provisions shall cease to have effect, namely—

(a) section 627 of the Taxes Act 1988 (elections by Lloyd's underwriters with respect to retirement annuities);

(b) in section 641 of that Act, subsection (2) (elections by Lloyd's underwriters with respect to carry-back of contributions); and

(c) in section 183 of the 1993 Act, subsection (3) (amendments of sections 627(5) and 641(2) of the Taxes Act 1988).

(3) Subject to any provision to the contrary, the provisions of Schedule 21 to this Act have effect for the year 1994-95 and subsequent years of assessment.

(4) Subsection (2) above has effect for the year 1997-98 and subsequent years of assessment.

Supplemental

229 Regulations.

The Board may by regulations provide—

(a) for the assessment and collection of tax charged in accordance with section 219 above (so far as not provided for by Schedule 19 to the 1993 Act as applied by section 221 above);

(b) for making, in the event of any changes in the rules or practice of Lloyd's, such amendments of this Chapter as appear to the Board to be expedient having regard to those changes;

(c) for modifying the application of this Chapter in cases where a syndicate continues after the end of its closing year or a corporate member becomes insolvent or otherwise ceases to carry on its underwriting business;

[F87(ca) for modifying the application of this Chapter in relation to cases where assets forming part of a **[**F88premium**]** trust fund are the subject of—

F89(i) . . . . . .

(ii) any such arrangements or agreements as are mentioned in section 737E(2) and (8) of the Taxes Act 1988 (sale and repurchase of securities etc.);**]**

(d) for giving credit for foreign tax.

Textual Amendments

F87 S. 229(ca) inserted (1.5.1995) by 1995 c. 4, **s. 83(2)**

F88 Word in s. 229(ca) substituted (1.12.2001) by S.I. 2001/3629, **art. 87(e)**

F89 S. 229(ca)(i) repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. VI(10)**; S.I. 1997/991, **art. 2**

230 Interpretation and commencement.

(1) In this Chapter, unless the context otherwise requires—

"the 1993 Act" means the [M38]Finance Act 1993;

"ancillary trust fund", in relation to a corporate member, does not include a **[**[F90]premium**]** trust fund but, subject to that, means any trust fund required or authorised by the rules of Lloyd's, or required by a members' agent or regulating trustee of the corporate member;

"closing year"—

(a) in relation to an underwriting year, means the underwriting year next but one following that year; and

(b) in relation to a syndicate, means the closing year of the underwriting year for which it was formed;

"corporate member" means a body corporate which is a member of Lloyd's and is or has been an underwriting member;

"inspector" includes any officer of the Board;

"the Management Act" means the [M39]Taxes Management Act 1970;

"managing agent", in relation to a syndicate and an underwriting year, means—

(a) the person registered as a managing agent at Lloyd's who was acting as such an agent for the syndicate at the end of that year, or

(b) such other person as may be determined in accordance with regulations made by the Board;

"member" means a member of Lloyd's who is or has been an underwriting member;

"members' agent", in relation to a corporate member, means a person registered as a members' agent at Lloyd's who has been appointed by the corporate member to act as its members' agent in respect of all or any part of its underwriting business;

[[F91]"premium trust fund" means a trust fund into which premiums receivable by members are paid in compliance with a trust deed under section 10.3 of the Lloyd's Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000;**]**

"prescribed" means prescribed by regulations made by the Board;

"profits" includes gains;

"regulating trustee", in relation to a corporate member, means a person designated as such by the terms of any trust deed by which a premiums trust fund of the corporate member is constituted;

"stop-loss insurance" means any insurance taken out by a corporate member against losses in its underwriting business;

"syndicate" means a syndicate of underwriting members of Lloyd's formed for an underwriting year;

"underwriting business", in relation to a corporate member, means its underwriting business as a member of Lloyd's;

"underwriting year" means the calendar year.

(2) For the purposes of this Chapter, unless the contrary intention appears—

(a) the profits or losses of a corporate member's underwriting business include profits or losses arising to it—

(i) from assets forming part of a **[**[F92]premium**]** trust fund or an ancillary trust fund; or

(ii) from assets employed by it in, or in connection with, its underwriting business; and

(b) any charge made on a corporate member by the managing agent of a syndicate of which it is a member, and any expense incurred on its behalf by the managing agent of such a syndicate, shall be treated as expenses arising directly from its membership of that syndicate.

(3) Subject to any provision to the contrary, the provisions of this Chapter have effect for accounting periods ending on or after 1st January 1994 or, as the case may require, for the underwriting year 1994 and subsequent underwriting years.

Textual Amendments

F90 S. 230(1): Word in the definition of "ancillary trust fund" substituted (1.12.2001) by S.I. 2001/3629, **art. 87(f)**

F91 S. 230(1): Definition of "premium trust fund" substituted (1.12.2001) by S.I. 2001/3629, **art. 85**

F92 Word in s. 230(2)(a)(i) substituted (1.12.2001) by S.I. 2001/3629, **art. 87(f)**

Modifications etc. (not altering text)

C17 S. 230 applied (1.5.1995) by 1995 c. 4, **s. 127(16)(b)**
S. 230 applied (29.4.1996 with effect as mentioned in s. 105 of the amending Act) by 1996 c. 8, s. 99, **Sch. 11 para. 7(2)** (with Pt. IV Chapter II (ss. 80-105))

Marginal Citations

M38 1993 c.34.

M39 1970 c.9.

Status:
Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
Finance Act 1994, Part IV is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.