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## SCHEDULES

### SCHEDULE 1

Section 1.

#### TABLE OF RATES OF DUTY ON WINE AND MADE-WINE

#### “PART I

WINE OR MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT.

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	£
Wine or made-wine of a strength not exceeding 2 per cent.	13.48
Wine or made-wine of a strength exceeding 2 per cent. but not exceeding 3 per cent.	22.46
Wine or made-wine of a strength exceeding 3 per cent. but not exceeding 4 per cent.	31.45
Wine or made-wine of a strength exceeding 4 per cent. but not exceeding 5 per cent.	40.44
Wine or made-wine of a strength exceeding 5 per cent. but not exceeding 5.5 per cent.	49.42
Wine or made-wine of a strength exceeding 5.5 per cent. but not exceeding 15 per cent. and not being sparkling	134.77
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent. but not exceeding 15 per cent.	222.55
Wine or made-wine of a strength exceeding 15 per cent. but not exceeding 22 per cent.	207.33

#### PART II

WINE OR MADE-WINE OF A STRENGTH EXCEEDING 22 PER CENT.

<i>Description of wine or made-wine</i>	<i>Rates of duty per litre of alcohol in the wine or made-wine</i>
	£

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Wine or made-wine of a strength exceeding 19.81”  
22 per cent.

SCHEDULE 2

Section 5.

VEHICLES EXCISE DUTY: MISCELLANEOUS PROVISIONS

F1<sub>1</sub> .....

**Textual Amendments**  
F1 Sch. 2 para. 1 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

F2<sub>2</sub> .....

**Textual Amendments**  
F2 Sch. 2 para. 2 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

F3<sub>3</sub> .....

**Textual Amendments**  
F3 Sch. 2 para. 3 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

F4<sub>4</sub> .....

**Textual Amendments**  
F4 Sch. 2 para. 4 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

F5<sub>5</sub> .....

**Textual Amendments**  
F5 Sch. 2 para. 5 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

F6<sub>6</sub> .....

**Textual Amendments**  
F6 Sch. 2 para. 6 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

F7<sub>7</sub> .....

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**Textual Amendments**

**F7** Sch. 2 para. 7 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F8** .....

**Textual Amendments**

**F8** Sch. 2 para. 8 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F9** .....

**Textual Amendments**

**F9** Sch. 2 para. 9 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F10**10 .....

**Textual Amendments**

**F10** Sch. 2 para. 10 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F11**11 .....

**Textual Amendments**

**F11** Sch. 2 para. 11 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F12**12 .....

**Textual Amendments**

**F12** Sch. 2 para. 12 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F13**13 .....

**Textual Amendments**

**F13** Sch. 2 para. 13 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F14**14 .....

**Textual Amendments**

**F14** Sch. 2 para. 14 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

**F15**15 .....

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**Textual Amendments**

**F15** Sch. 2 para. 15 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F16</sup>16 .....

**Textual Amendments**

**F16** Sch. 2 para. 16 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F17</sup>17 .....

**Textual Amendments**

**F17** Sch. 2 para. 17 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F18</sup>18 .....

**Textual Amendments**

**F18** Sch. 2 para. 18 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F19</sup>19 .....

**Textual Amendments**

**F19** Sch. 2 para. 19 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F20</sup>20 .....

**Textual Amendments**

**F20** Sch. 2 para. 20 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F21</sup>21 .....

**Textual Amendments**

**F21** Sch. 2 para. 21 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F22</sup>22 .....

**Textual Amendments**

**F22** Sch. 2 para. 22 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F23</sup>23 .....

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**Textual Amendments**

**F23** Sch. 2 para. 23 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

24 In Article 34 of the <sup>M1</sup>Road Traffic (Northern Ireland) Order 1981 (obligatory vehicle test certificates), the following paragraph shall be substituted for paragraph (3)—

“(3) For the purposes of paragraph (2)(b) there shall be disregarded—  
(a) the use of a vehicle before it is sold or supplied by retail; and  
(b) the use of a vehicle to which a motor dealer has assigned a mark under section 20 of the Vehicles (Excise) Act 1971 before it is registered by the Secretary of State under section 19(1)(b) of that Act.”

**Marginal Citations**

**M1** S.I. 1981/154 (N.I.1).

25 In section 47 of the <sup>M2</sup>Road Traffic Act 1988 (obligatory test certificates), the following subsection shall be substituted for subsection (4)—

“(4) For the purposes of subsection (2)(b) above there shall be disregarded—  
(a) the use of a vehicle before it is sold or supplied by retail, and  
(b) the use of a vehicle to which a motor dealer has assigned a mark under section 20 of the Vehicles (Excise) Act 1971 before it is registered by the Secretary of State under section 19(1)(b) of that Act.”

**Marginal Citations**

**M2** 1988 c. 52.

<sup>F24</sup>26 .....

**Textual Amendments**

**F24** Sch. 2 para. 26 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F25</sup>27 .....

**Textual Amendments**

**F25** Sch. 2 para. 27 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

<sup>F26</sup>28 .....

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#### Textual Amendments

**F26** Sch. 2 para. 28 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1)(2), Sch. 5 Pt. I (with s. 57(4))

29 Paragraphs <sup>F27</sup> . . . , 24 and 25 shall come into force on 1st June 1994.

#### Textual Amendments

**F27** Words in Sch. 2 para. 29 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1), Sch. 5 Pt. I (with s. 57(4))

## SCHEDULE 3

Section 6.

### AMENDMENTS ABOUT GAMING MACHINE LICENCE DUTY

#### *Licences for periods beginning on or after 1st May 1994*

- 1 (1) The <sup>M3</sup>Betting and Gaming Duties Act 1981 shall be amended as follows.
- (2) For section 21(3) (period of gaming machine licences) there is substituted—
- “(3) A gaming machine licence may be granted for a period of a month, or of any number of months not exceeding twelve, beginning on any day of any month”.
- (3) Section 22(5) (rates of duty) is omitted.
- (4) For section 23 (amount of duty) there is substituted—

#### “23 Amount of duty.

- (1) The amount of duty payable on a gaming machine licence shall be—
- the appropriate amount for the machine which it authorises, or
  - if it authorises two or more machines, the aggregate of the appropriate amounts for each of those machines.
- (2) The appropriate amount for each machine shall be determined in accordance with the following Table by reference to—
- the period for which the licence is granted, and
  - whether the machine falls within column 2 or column 3 of the Table, and references in this Part to a rate of gaming machine licence duty are references to the rate in column 2 or the rate in column 3.

TABLE

<i>(1) Period (in months) for which licence granted</i>	<i>(2) Small prize or five-penny machines</i>	<i>(3) Other machines</i>
1	50	125

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2	90	230
3	130	335
4	170	435
5	210	540
6	245	630
7	290	735
8	330	840
9	365	930
10	405	1,035
11	425	1,090
12	450	1,150”

- (5) In section 24 (restrictions on number of licences)—
- (a) subsection (2),
  - (b) in subsections (3) and (4), “such”, and
  - (c) in subsection (6)(a), the words from “or” at the end of sub-paragraph (i) to “greater”,
- are omitted.
- (6) In section 26 (supplementary provisions), in subsection (4)—
- (a) “section 22(5) or” is omitted, and
  - (b) for “those provisions” there is substituted “ that provision ”.
- (7) In Part II of Schedule 4 (supplementary provisions) for paragraphs 6 and 7 (applications and duration of licences) there is substituted—
- “6 An application for a gaming machine licence shall be made to the Commissioners in such form and manner as they may require.
- 7 The period for which a gaming machine licence is granted shall begin with the day on which application for the licence is received by the Commissioners or, if a later day is specified for that purpose in the application, with that day; and the licence shall expire at the end of that period.”
- (8) Paragraphs 9 to 11A of that Schedule (amendment, etc.) shall not apply at any time before 1st May 1994 to any licence in relation to which this paragraph has effect.
- (9) This paragraph shall have effect in relation to gaming machine licences granted for any period beginning on or after 1st May 1994.

**Marginal Citations**

M3 1981 c. 63.

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### *Special licences*

- 2 No special licence (as defined in section 21(2) of the <sup>M4</sup>Betting and Gaming Duties Act 1981) may be granted for any period beginning on or after 1st May 1994.

#### **Marginal Citations**

**M4** 1981 c. 63.

- 3 (1) Accordingly, that Act shall be amended as follows.
- (2) In section 21, for the words following “force” in subsection (1) to the end of subsection (2) there is substituted—
- “a licence granted under this Part of this Act with respect to the premises.
- (2) Such a licence shall be known as a gaming machine licence”.
- (3) Section 21A (special licences) is omitted.
- (4) In section 24—
- (a) in subsection (3), the words from “but” to the end are omitted, and
- (b) in subsection (4), the words “or there are special licences in force with respect to those machines” are omitted.
- (5) In paragraph 8 of Schedule 4 (transfer of licences), in sub-paragraph (1), for paragraphs (a) and (b) there is substituted “transfer a gaming machine licence in respect of any premises to a successor in title to the interest in those premises of the person to whom the licence was granted”.
- (6) Paragraph 11(2) of that Schedule is omitted.
- (7) In paragraph 12 of that Schedule (display of licence), for “an ordinary licence” there is substituted “a gaming machine licence”.
- <sup>F28</sup>(8) .....
- (9) In paragraph 18 of that Schedule (forfeiture), for paragraphs (a) and (b) there is substituted “those machines which are authorised by the gaming machine licence or licences produced to him”.
- (10) Paragraph 4(2) below shall cease to have effect.
- (11) This paragraph shall come into force on 1st May 1995.

#### **Textual Amendments**

**F28** Sch. 3 para. 3(8) repealed (1.5.1995 with effect as mentioned in s. 14(2)(3) of the repealing Act) by 1995 c. 4, ss. 14, 162, Sch. 29 Pt. III, Note 1

### *Seasonal licences*

- 4 (1) In Part I of Schedule 4 to that Act (exemptions), for paragraph 4 (and the cross-heading preceding it) there shall be substituted—

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*“ Seasonal licences*

- 4
- (1) If at any time during March of any year there has previously been granted a seasonal licence for that year authorising the provision of any number of small-prize machines on any premises and that licence has not been surrendered, it shall be treated for the purposes of this Act as authorising the provision at that time of that number of small-prize machines on the premises.
  - (2) Where a seasonal licence is granted for any year authorising the provision of any number of small-prize machines on any premises, and the licence is not surrendered, it shall be treated for the purposes of this Act as authorising during October of that year the provision of that number of small-prize machines on the premises.
  - (3) Subject to sub-paragraph (4) below, in this Schedule “seasonal licence”, in relation to any year, means a gaming machine licence expressed to authorise only the provision of small-prize machines on any premises for the period of six months beginning with 1st April in that year.
  - (4) A licence in respect of any premises is not a seasonal licence in relation to any year if any gaming machine licence has been granted in respect of those premises for any period which includes the whole or any part of the preceding winter period.
  - (5) If in relation to any year—
    - (a) a seasonal licence is granted in respect of any premises, and
    - (b) another gaming machine licence is granted (whether before or after the grant of the seasonal licence or after the surrender of the seasonal licence) in respect of those premises for any period which includes the whole or any part of the following winter period (and does not include the whole or any part of the preceding winter period),there shall (unless an amount has already become payable under this sub-paragraph in respect of the seasonal licence) be payable on the seasonal licence on the relevant date an additional amount of duty.
  - (6) The additional amount is the difference between the duty payable (apart from this paragraph) on that licence at the time it was granted and the amount that would have been so payable if the licence had been granted for a period of eight months or, in a case where the seasonal licence has been surrendered before the beginning of September, seven months.
  - (7) In sub-paragraph (5) above, the “relevant date” means—
    - (a) the date on which the seasonal licence is granted, or
    - (b) the date on which the other licence is granted,whichever is the later.
  - (8) In this paragraph “winter period” means November to February.”

F29(2) .....

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- (3) Sections 21(3) and 23 of that Act (as inserted by this Schedule) shall have effect for the purposes of paragraph 4(6) of that Schedule (as so inserted) in relation to gaming machine licences granted for the period of six months beginning with 1st April 1994.
- (4) This paragraph shall have effect in relation to gaming machine licences granted for any period beginning on or after 1st April 1994.

**Textual Amendments**

**F29** Sch. 3 para. 4(2) ceased to have effect (1.5.1995) by virtue of 1994 c. 9, s. 6, Sch. 3 para. 3(10)(11)

*Amendment and surrender of licences*

- 5 (1) Part II of Schedule 4 to that Act shall be amended as follows.
- (2) Paragraphs 9 and 10 (amendment of licences) are omitted.
- (3) In paragraph 11 (surrender of licence), for sub-paragraph (1) there is substituted—
- “(1) The holder of a gaming machine licence may surrender it to the proper officer at any time.
- (1A) On the surrender of the licence the holder shall be entitled to repayment of duty of the following amount.
- (1B) That amount is the difference between—
- (a) the amount of duty actually paid on the licence, and
- (b) the amount (if less) that would have been paid if the period for which the licence was granted had been reduced by the number of complete months in that period which have not expired,
- and for the purposes of this paragraph a seasonal licence is to be treated as granted for the period of eight months beginning with 1st March”.
- (4) Paragraph 11A (reduction of duty in certain cases) is omitted.
- (5) Sub-paragraph (3) above shall not apply to special licences; and sections 21(3) and 23 of that Act (as inserted by this Schedule) shall have effect for the purposes of paragraph 11(1B)(b) of that Schedule (as so inserted) in relation to gaming machine licences granted for any period beginning before 1st May 1994.
- (6) This paragraph shall come into force on 1st May 1994.

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## SCHEDULE 4

Section 9.

### PENALTIES FOR STATUTORY CONTRAVENTIONS

#### PART I

##### CONTRAVENTIONS UNDER THE MANAGEMENT ACT

- 1 The Management Act shall be amended in accordance with the following provisions of this Part of this Schedule.
- 2 (1) In subsection (6) of section 92 (offence of making alteration in or addition to approved warehouse), for the words from “he shall be liable” onwards there shall be substituted “ the making of the alteration or addition shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”  
(2) For subsection (8) of that section (offence of contravening condition or direction given in connection with the approval of a warehouse) there shall be substituted the following subsection—

“(8) Where any person contravenes or fails to comply with any condition imposed or direction given by the Commissioners under this section, his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).”
- 3 In section 93(6) (offence of failing to comply with any warehousing regulations or with any condition, restriction or requirement imposed under any warehousing regulations), for the words from “he shall be liable” onwards there shall be substituted “ his failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 4 In section 100J (offence and forfeiture in the case of a contravention of REDS regulations), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which any person contravenes any provision of any such regulations, or fails to comply with any such condition or restriction, shall be liable to forfeiture. ”
- 5 In section 101(4) (offence of failing to produce licence after being requested to do so)—
  - (a) for “a reasonable time” there shall be substituted “ one month ”; and
  - (b) for the words from “he shall be liable” onwards there shall be substituted “ his failure shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 6 (1) In subsection (2) of section 107 (offence of failing to display notice or comply with directions as to the form and manner of a notice), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”  
(2) In subsection (3) of that section (offence of affixing misleading notice), for the words from “he shall be liable” onwards there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 7 In section 108(4) (offence of contravening directions in relation to premises etc. entered under the revenue trade provisions), for the words from “he shall be

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- liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 8 (1) In subsection (1) of section 111 (using premises or article without having entered them), for the words from “he shall be liable” to the words “and any”, in the first place where they occur, there shall be substituted “ his use of the premises or article shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any ”.
- (2) Subsection (2) of that section (fraudulent use of entered premises or article) shall cease to have effect.
- 9 In section 114(2) (offence of using prohibited substance or liquor), for the words from “he shall be liable” onwards there shall be substituted “ his use of that substance or liquor in that manner shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties); but section 10 of that Act (exception for cases of reasonable excuse) shall not apply in relation to conduct attracting a penalty by virtue of this subsection. ”
- 10 (1) In subsection (4) of section 115 (offence of tampering etc. with specimen)—
- (a) for “any person other than an officer” there shall be substituted “ the revenue trader ”; and
- (b) for the words from “he shall be liable” onwards there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- (2) After that subsection there shall be inserted the following subsection—
- “(5) For the purposes of subsection (4) above and without prejudice to section 10(1) of the Finance Act 1994 (exception for cases of reasonable excuse), conduct by an employee of the revenue trader or by any other person entitled to act on the trader’s behalf in connection with his trade shall be deemed to be conduct by that trader except in so far as he took all reasonable steps to prevent it.”
- 11 In section 116(3) (offence of failing to pay duty on demand), for the words from “the trader shall” onwards there shall be substituted “ the trader’s failure to pay the duty on demand shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which shall be calculated by reference to the amount of the duty demanded and shall also attract daily penalties. ”
- 12 In section 118G (offences in connection with record keeping etc. by revenue traders), for the words from “he shall be liable” onwards there shall be substituted “ his failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) and, in the case of any failure to keep records, shall also attract daily penalties. ”
- 13 (1) In subsection (1) of section 170A (offence of handling goods subject to unpaid duty)
- (a) in paragraph (b), for the words from “the duty” to “its payment” there shall be substituted “ a payment of duty on the goods is outstanding and ”; and
- (b) for the words after that paragraph there shall be substituted— “ the conduct of that person falling within paragraph (a) above shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which shall be calculated by reference to the amount of the unpaid duty. ”

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- (2) In subsection (2) of that subsection (defences), for the words before paragraph (a) there shall be substituted—

“(2) Section 10 of the Finance Act 1994 (exception to civil penalty in cases of reasonable excuse) shall not apply in relation to conduct attracting a penalty by virtue of subsection (1) above; but such conduct shall not give rise to any liability to a penalty under section 9 of that Act if the person whose conduct it is satisfies the Commissioners or, on appeal, a VAT and duties tribunal, that he—”.

## PART II

### CONTRAVENTIONS UNDER THE ALCOHOLIC LIQUOR DUTIES ACT 1979

- 14 The <sup>M5</sup>Alcoholic Liquor Duties Act 1979 shall be amended in accordance with the following provisions of this Part of this Schedule.

#### Marginal Citations

M5 1979 c. 4.

- 15 In section 8(2) (offence of contravening condition of remission of duty on spirits used for medical or scientific purposes), for the words from “then” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 16 In section 10(2) (offence of contravening condition of remission of duty on spirits used in art or manufacture), for the words from “then” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 17 (1) In subsection (3) of section 13 (offence and forfeiture in the case of a contravention of regulations etc. applying to the manufacture of spirits)—
- (a) for the words from “he shall” to “continues” there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”; and
  - (b) for the words from “in respect of which” onwards there shall be substituted “ in respect of which any person contravenes any such regulation, or fails to comply with any such regulation, condition, restriction or requirement, shall be liable to forfeiture. ”
- (2) Subsection (4) of that section (power to vary penalty under subsection (3)) shall cease to have effect.
- (3) In subsection (5) of that section (offence and forfeiture in the case of a contravention of any condition imposed with respect to any process of manufacture involving spirits), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any spirits in respect of which any person contravenes or fails to comply with any such condition shall be liable to forfeiture. ”
- 18 (1) In subsection (4) of section 15 (offence of failing to provide accommodation for officer in charge of a distiller’s warehouse), for the words from “he shall” to “but

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nothing” there shall be substituted “ his failure shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties); but nothing ”.

- (2) For subsection (5) of that section there shall be substituted the following subsection—
- “(5) Where, after the approval of a distiller’s warehouse, the distiller by whom it is provided makes, without the previous consent of the Commissioners, an alteration in or addition to that warehouse, the making of the alteration or addition shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).”
- (3) In subsection (7) of that section (offence and forfeiture in the case of a contravention of regulations relating to a distiller’s warehouse), for the words from “he shall” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any spirits in respect of which any person contravenes any such regulation, or fails to comply with any such regulation or condition, shall be liable to forfeiture. ”
- (4) Subsection (8) of that section (power to vary penalty under subsection (7)) shall cease to have effect.
- 19 (1) In subsection (2) of section 16 (offence and forfeiture in the case of a contravention of regulations relating to racking at a distillery), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any spirits in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”
- (2) In subsection (3) of that section (forfeiture and offence in the case of an excess of stock), for the words from “the distiller shall be liable” onwards there shall be substituted “ there shall be deemed to have been conduct by the distiller attracting a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 20 In section 18(6) (rectifying or compounding spirits in contravention of an excise licence), for the words from “he shall be liable” onwards there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 21 (1) In subsection (2) of section 19 (offence and forfeiture in the case of contraventions of obligations imposed by or under regulations relating to the rectifying etc. of spirits), for the words from “he shall” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any spirits and any other article in respect of which any person contravenes any such regulation, or fails to comply with any such regulation, condition, requirement or restriction, shall be liable to forfeiture. ”
- (2) Subsection (3) of that section (power to vary penalty under subsection (2)) shall cease to have effect.
- 22 In each of subsections (1) and (2) of section 20 (forfeiture and offences in the case of an excess or deficiency of stock), for the words from “the rectifier shall be liable” onwards there shall be substituted “ there shall be deemed to have been conduct by the rectifier attracting a penalty under section 9 of the Finance Act 1994 (civil penalties). ”

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- 23 (1) In subsection (3) of section 21 (offences in the case of certain contraventions of restrictions relating to rectifiers), for the words from “he shall be liable” onwards there shall be substituted “ the contravention of that subsection shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) or, as the case may be, there shall be deemed to have been conduct by the rectifier attracting such a penalty. ”
- (2) For subsection (4) of that section (disqualification from holding a licence) there shall be substituted the following subsection—
- “(4) Where—
- (a) a rectifier becomes liable and is assessed to a penalty by virtue of subsection (3) above, and
- (b) the assessment is not more than three years after the making of a previous assessment to a previous penalty to which he became liable by virtue of that subsection,
- then his licence shall become void and he shall be disqualified from holding a licence as a rectifier for a period of three years from the date on which the assessment to the penalty mentioned in paragraph (a) above is made.”
- (3) Where a person has been convicted of an offence under subsection (3) of that section within the period of three years before the coming into force of sub-paragraph (2) above—
- (a) that sub-paragraph shall be without prejudice to the continuation to the end of the appropriate three year period of any disqualification under subsection (4) of that section which is in force when that sub-paragraph comes into force; and
- (b) subsection (4) of that section, as amended by that sub-paragraph, shall have effect as if the conviction were an assessment to a penalty to which that person was liable by virtue of subsection (3) of that section.
- 24 In section 22(9) (offence and forfeiture in the case of a contravention of regulations relating to drawback on compounds), for the words from “then” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”
- 25 In section 24(4) (offence of contravening provisions restricting the carrying on of other trades by a distiller or rectifier), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 26 (1) In subsection (1) of section 33 (offence and forfeiture in the case of the use of spirits relieved from spirits duty), in the words after paragraph (c), for the words from “he shall” to “greater” there shall be substituted “ his doing so shall, unless he has complied with the requirements specified in subsection (2) below, attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- (2) In subsection (5) of that section (contravention of enforcement regulations), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 27 For subsection (2) of section 34 (offence of contravening prohibition on grogging) there shall be substituted the following subsection—

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- “(2) A contravention of this section shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).”
- 28 In section 35(3) (contravention of regulations as to returns etc. relating to importation, manufacture, sale or use of alcohols), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 29 In section 41A(8) (offence and forfeiture in the case of a contravention of a condition of registration), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any beer in respect of which any person contravenes or fails to comply with any such condition shall be liable to forfeiture. ”
- 30 In section 44(2) (offence of contravening condition imposed in connection with remission of duty on beer used for the purposes of research or experiment), for the words from “then” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 31 In section 46(2) (offence of contravening regulations relating to the remission of duty on spoilt beer), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 32 (1) In subsection (4) of section 47 (offence of failing to apply for registration as a brewer), for the words from “he shall be liable” to “scale;” there shall be substituted “ his failure shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- (2) In subsection (5) of that section (offence and forfeiture in the case of the production of beer by an unregistered person), for the words from “he shall be liable” onwards there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which shall be calculated by reference to the amount of duty charged on the beer produced, and the beer produced and any worts found on those premises shall be liable to forfeiture. ”
- 33 For subsection (3) of section 49 (offence and forfeiture in the case of a contravention of beer regulations) there shall be substituted the following subsection—
- “(3) Where any person contravenes or fails to comply with any regulation made under this section, his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article or substance in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture.”
- 34 In section 54(5) (offence of producing wine on unlicensed premises), for the words from “he shall” to “and the wine” there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which shall be calculated by reference to the amount of duty charged on the wine produced, and the wine ”.
- 35 In section 55(6) (offence of producing made-wine on unlicensed premises), for the words from “he shall” to “and the made-wine” there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties)

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- which shall be calculated by reference to the amount of duty charged on the made-wine produced, and the made-wine ”.
- 36 In section 55A(3) (offence of contravening regulations relating to wine or made-wine of a certain strength)—
- (a) for “Any person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable” to “scale” there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- 37 In section 56(2) (offence and forfeiture in the case of a contravention of regulations relating to wine and made-wine), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”
- 38 For subsection (2) of section 59 (offence of rendering wine or made-wine sparkling) there shall be substituted the following subsection—
- “(2) Where any person contravenes subsection (1) above or is concerned in such a contravention, his contravention or, as the case may be, his being so concerned shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).”
- 39 In section 61(2) (offence of contravening regulations relating to the remission of duty on spoilt wine or made-wine), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 40 (1) In subsection (4) of section 62 (offence of producing cider on unlicensed premises), for the words from “he shall” to “and the cider” there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which shall be calculated by reference to the amount of duty charged on the cider made, and the cider ”.
- (2) In subsection (6) of that section (offence and forfeiture in the case of a contravention of regulations made for the purposes of managing the duty on cider), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”
- 41 In section 64(2) (offence of contravening regulations relating to the remission of duty on spoilt cider), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 42 In section 67(2) (offence and forfeiture in the case of any contravention of regulations regulating the keeping of dutiable liquors by wholesalers and retailers), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any liquor, container or utensil in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”

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- 43 (1) In subsection (3) of section 69 (offences relating to the carrying on of businesses by wholesalers and retailers), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- (2) In subsection (4) of that section (offence relating to the sending out or selling of spirits by a retailer), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 44 (1) In subsection (1) of section 71 (penalty of misdescribing liquor as spirits), for the words from “that person shall” to “liquor or that” there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) unless the duty chargeable on spirits has been paid in respect of no less than 97.5 per cent. of the liquor or ”.
- (2) In subsection (3) of that section, for “guilty of an offence under this section” there shall be substituted “ liable to a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- (3) For subsection (4) of that section there shall be substituted the following subsection—
- “(4) Any liquor or other article by means of or in relation to which there is a contravention of subsection (1) above shall be liable to forfeiture.”
- 45 In section 75(5) (offence of unlicensed methylation of spirits)—
- (a) for “Any person who” there shall be substituted “ Where any person ”; and
- (b) for the words from “shall be liable” onwards there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 46 (1) In subsection (3) of section 77 (offence of contravening regulations relating to methylated spirits or any condition, restriction or requirement imposed under any such regulations), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- (2) In subsection (4) of that section (offence of unlicensed dealing in methylated spirits), for the words from “he shall be liable” onwards there shall be substituted “ his doing so shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- (3) In subsection (5) of that section (forfeiture), for “an offence under subsection (3) or (4) above is committed” there shall be substituted “ there is such a contravention or failure to comply as is mentioned in subsection (3) above or any such dealing as is mentioned in subsection (4) above ”.
- 47 In section 78(4) (offence and forfeiture in the case of a person having unlicensed methylated spirits in his possession), for the words from “he shall be liable” to “and the” there shall be substituted “ his having them in his possession shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and the ”.
- 48 In section 82(2) (offence and forfeiture in the case of a contravention of regulations relating to stills), for the words from “he shall be liable” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any still or part thereof in

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respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture.”

### PART III

#### CONTRAVENTIONS UNDER THE HYDROCARBON OIL DUTIES ACT 1979

- 49 The <sup>M6</sup>Hydrocarbon Oil Duties Act 1979 shall be amended in accordance with the following provisions of this Part of this Schedule.

#### Marginal Citations

M6 1979 c. 5.

- 50 (1) In subsection (3) of section 10 (offences in connection with use etc. of oil that has been relieved of duty for a purpose which does not qualify for relief)—
- (a) for “A person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable” to “greater” there shall be substituted “ his use or acquisition of the oil or, as the case may be, his becoming so liable shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- (2) In subsection (4) of that section (offence of supplying for a use that does not qualify for relief)—
- (a) for “A person who” there shall be substituted “ Where any person ”;
  - (b) for the words from “shall be liable” to “greater, if” there shall be substituted “ and ”; and
  - (c) at the end there shall be inserted “ his supplying the oil shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- 51 (1) In subsection (1) of section 13 (offences in connection with use etc. of heavy oil)—
- (a) for “A person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable” to “greater” there shall be substituted “ his use of the oil or, as the case may be, his becoming so liable shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.
- (2) In subsection (2) of that section (offence of supplying heavy oil for a use in contravention of section 12(2))—
- (a) for “A person who” there shall be substituted “ Where any person ”;
  - (b) for the words from “shall be liable” to “greater, where” there shall be substituted “ and ”; and
  - (c) at the end there shall be inserted “ his supplying the oil shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 52 (1) In subsection (4) of section 14 (offences in connection with use etc. of oil in the case of which rebate has been allowed)—
- (a) for “A person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable” to “greater” there shall be substituted “ his use or acquisition of the oil or, as the case may be, his becoming so liable shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) ”.

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- (2) In subsection (5) of that section (offence of supplying for a use for which no rebate is allowed)—
- (a) for “A person who” there shall be substituted “ Where any person ”;
  - (b) for the words from “shall be liable” to “greater, if” there shall be substituted “ and ”; and
  - (c) at the end there shall be inserted “ his supplying the oil shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”
- 53 In section 18(5) (offence in certain circumstances of using or relanding oil), for the words from “he shall be liable” onwards there shall be substituted “ his use or relanding of the oil or any part of it shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and, in the case of any contravention falling within paragraph (b) of this subsection, the oil relanded shall be liable to forfeiture. ”
- 54 In section 20AA(4) (offence and forfeiture in the case of a contravention of the regulations relating to reliefs), for paragraph (a) there shall be substituted the following paragraph—
- “(a) his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties); and”.
- 55 In section 21(3) (offence and forfeiture in the case of a contravention of regulations relating to administration or enforcement)—
- (a) for “A person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable on” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”
- 56 (1) In subsection (1) of section 22 (offence and forfeiture in the case of the use of fuel substitute for a chargeable purpose without duty having been paid)—
- (a) for “A person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable on” onwards there shall be substituted “ his putting the liquid to that use shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which any person contravenes this subsection shall be liable to forfeiture. ”
- (2) After that subsection there shall be inserted the following subsection—
- “(1A) Section 10 of the Finance Act 1994 (exception for cases of reasonable excuse) shall not apply in relation to conduct attracting a penalty by virtue of subsection (1) above.”
- 57 (1) In subsection (1) of section 23 (offence and forfeiture in the case of the use etc. of road fuel gas without duty having been paid)—
- (a) for “A person who” there shall be substituted “ Where any person ”; and
  - (b) for the words from “shall be liable on” onwards there shall be substituted “ his use of the road fuel gas or, as the case may be, his taking it as fuel into that vehicle shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which a person contravenes this subsection shall be liable to forfeiture. ”

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

“(1A) Section 10 of the Finance Act 1994 (exception for cases of reasonable excuse) shall not apply in relation to conduct attracting a penalty by virtue of subsection (1) above.”

58 In section 24(4) (offence and forfeiture in the case of a contravention of regulations relating to incidental matters)—

- (a) for “A person who” there shall be substituted “ Where any person ”; and
- (b) for the words from “shall be liable on” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which any person contravenes or fails to comply with any such regulation shall be liable to forfeiture. ”

#### PART IV

##### CONTRAVENTIONS UNDER THE TOBACCO PRODUCTS DUTY ACT 1979

59 In section 7(2) of the <sup>M7</sup>Tobacco Products Duty Act 1979 (offence and forfeiture in the case of a contravention of regulations for the management of the duty etc.), for the words from “he shall be liable” onwards there shall be substituted “ his failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any article in respect of which any person fails to comply with any such regulation, or which is found on premises in respect of which any person has failed to comply with any such regulation, shall be liable to forfeiture. ”

#### Marginal Citations

M7 1979 c. 7.

#### PART V

##### CONTRAVENTIONS UNDER THE BETTING AND GAMING DUTIES ACT 1981

60 The <sup>M8</sup>Betting and Gaming Duties Act 1981 shall be amended in accordance with the following provisions of this Part of this Schedule.

#### Marginal Citations

M8 1981 c. 63.

61 In section 24(5) (offence where gaming machine provided without there being a licence in force)—

- (a) for “any person who at the time when it is so provided” there shall be substituted “ the provision of the machine shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) and, for the purposes of the application of that section to the conduct attracting the penalty, the provision of the machine shall be treated as the conduct of each of the persons who, at the time when the gaming machine is provided ”; and

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- (b) the words after paragraph (f) shall be omitted.
- 62 (1) In paragraph 13 of Schedule 1 (enforcement), for sub-paragraphs (1) and (2) there shall be substituted—
- “(1) Where any person—
- (a) fails to pay any general betting duty or pool betting duty payable by him, or
- (b) contravenes or fails to comply with any of the provisions of, or of any regulations made under, any of paragraphs 2, 4 and 6 to 10 above,
- his failure to pay, contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which, in the case of a failure to pay, shall be calculated by reference to the amount of duty payable.
- (2) Any such failure to pay as is mentioned in sub-paragraph (1)(a) above shall also attract daily penalties.
- (2A) Any person who obstructs any officer in the exercise of his functions in relation to general betting duty or pool betting duty shall be guilty of an offence and liable on summary conviction to a penalty of level 4 on the standard scale.”
- (2) In paragraph 14(3) of that Schedule (offence of failing to produce permit within period reasonably required)—
- (a) the word “reasonably” shall be omitted; and
- (b) for the words from “he shall be guilty” onwards there shall be substituted “his failure shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).”
- (3) In paragraph 15 of that Schedule (forfeiture and cancellation of licence on second or subsequent conviction),—
- (a) in sub-paragraph (1), for “paragraph 13(1) or (3) above” there shall be substituted “paragraph 13(3) above” and the words from “(not being” to “9 above)” shall be omitted; and
- (b) in paragraph (a) of that sub-paragraph, for the words from “the conviction” to “other person)” there shall be substituted “there has been at least one previous occasion on which that or another person has been either—
- (i) convicted of an offence under paragraph 13(3) above; or
- (ii) assessed to a penalty to which he was liable under section 8 of the Finance Act 1994 (penalty for evasion),
- in respect of conduct taking place”.
- 63 (1) In paragraph 7 of Schedule 2 (enforcement), for sub-paragraphs (1) and (2) there shall be substituted—
- “(1) Where any person contravenes or fails to comply with any of the provisions of, or of any regulations made under, paragraph 3 above, his

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contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).

(1A) Any person who obstructs any officer in the exercise of his functions in relation to the duty on gaming licences shall be guilty of an offence and liable on summary conviction to a penalty of level 5 on the standard scale.”

(2) In sub-paragraph (5) of that paragraph, for “sub-paragraphs (1)(b) and” there shall be substituted “ sub-paragraph ”.

64 (1) In sub-paragraph (3) of paragraph 16 of Schedule 3 (offence of contravening provision made by or under that Schedule)—

(a) for “Any person who” there shall be substituted “ Where any person ”; and

(b) for the words after paragraph (b) there shall be substituted—

“ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”

(2) Sub-paragraph (4) of that paragraph (continuing offences) shall cease to have effect.

65 (1) In sub-paragraph (1) of paragraph 16 of Schedule 4 (offence of contravening provision made by or under that Schedule), for the words from “he shall be guilty” onwards there shall be substituted “ his contravention, failure to comply or refusal shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”

(2) Sub-paragraph (2) of that paragraph (continuing offences) shall cease to have effect.

## PART VI

### CONTRAVENTIONS RELATING TO LOTTERY DUTY

66 Chapter II of Part I of the <sup>M9</sup>Finance Act 1993 shall be amended in accordance with the following provisions of this Part of this Schedule.

#### Marginal Citations

M9 1993 c. 34.

67 In section 27(4) (offence of failing to pay duty)—

(a) for “A person who” there shall be substituted “ Where a person ”; and

(b) for the words from “is guilty” onwards there shall be substituted “ his failure so to make the payment shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) which shall be calculated by reference to the amount which has not been paid and shall also attract daily penalties. ”

68 In each of sections 28(3) and 29(8) (offences of contravening regulations made for the purposes of lottery duty)—

(a) for “A person who” there shall be substituted “ Where a person ”; and

(b) for the words from “is guilty” onwards there shall be substituted “ his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). ”

*Status: Point in time view as at 01/04/1996.*

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## SCHEDULE 5

Section 14.

## DECISIONS SUBJECT TO REVIEW AND APPEAL

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

**C1** Sch. 5 applied (1.6.1995) by **S.I. 1995/1046, reg. 7(3)**

*The Community Customs Code etc.*

- 1 The following decisions, so far as they are made for the purposes of the Community Customs Code and are decisions the authority for which is not contained in provisions outside that Code and any directly applicable Community legislation made for the purpose of implementing that Code, that is to say—
- (a) any decision in relation to any goods as to whether or not the entry, unloading or transhipment of the goods, or their release by or to any person or for any purpose, is to be allowed or otherwise permitted;
  - (b) any decision as to whether or not permission for the examination of, or the taking of samples from, any goods presented to the Commissioners is to be granted;
  - (c) any decision as to the route to be used for the movement of any goods;
  - (d) any other decision as to whether or not the requirements of any procedure for goods which are to be or have been presented to the Commissioners, or any other formalities in relation to any such goods, have been satisfied or complied with or are to be waived, or as to the measures to be taken, including any requirements to be imposed, in consequence of the inability or other failure of any person to comply with the required procedure;
  - (e) any decision in relation to any place or area as to whether or not it is to be, or to continue to be, designated or approved for any purpose;
  - (f) any decision, in any particular case, as to whether or not the carrying out of any processing or other operations or the use of any procedure is to be, or to continue to be, authorised or approved;
  - (g) any decision in relation to—
    - (i) the establishment or operation of any warehouse or other facility, or
    - (ii) the construction of any building,
 as to whether or not its establishment, operation or construction or the person by whom it is to be established, operated or constructed, is to be, or to continue to be, authorised or approved for any purpose;
  - (h) any decision consisting in the imposition of a requirement to supply information or assistance, or to furnish any document or other evidence, to the Commissioners or any officer or of a requirement to be present or represented when anything is done in relation to any goods;
  - (i) any decision to take or retain samples of any goods or as to the examination or analysis to which any goods or samples are to be subjected;
  - (j) any decision as to whether or not any person is to bear any of the expenses of the supply of any information by or on behalf of the Commissioners or as to the amount of any such expenses to be borne by any person;

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- (k) any decision as to whether or not any amount due in respect of any customs duty or any agricultural levy of the European Community is to bear interest or as to the rate at which or period for which any such amount is to bear interest;
- (l) any decision, in relation to a decision mentioned in any of the preceding sub-paragraphs, as to the conditions subject to which the decision so mentioned is made or, as the case may be, the matters to which that decision relates have effect;
- (m) any decision as to whether or not any person is to be required to give any security for the fulfilment, in whole or in part, of—
  - (i) any obligation to pay any customs duty or any agricultural levy of the European Community; or
  - (ii) any obligation to comply with a condition of any permission, designation, approval, authorisation or requirement mentioned in any of the preceding sub-paragraphs or with any provision for the purposes of which any decision falling within any of those sub-paragraphs is made,or as to the form or amount of, or the conditions of, any such security;
- (n) any decision as to the time at which or the period within which any obligation to pay any customs duty or agricultural levy of the European Community or to do any other thing required by virtue of the Community Customs Code is to be complied with;
- (o) any decision as to whether or not a decision falling within this paragraph is to be varied or revoked, including a decision as to whether or not the time at which any such decision is to take effect is to be deferred.

#### *The Management Act*

- 2 (1) The following decisions under or for the purposes of the Management Act, that is to say—
  - (a) any decision for the purposes of section 20, 22 or 25 as to whether or not an approval of a place as an approved wharf, as an examination station or as a transit shed is to be given or withdrawn or as to the conditions subject to which any such approval is given;
  - (b) any decision as to whether or not any permission for any of the purposes of section 21 (control of movement of aircraft) is to be given or withdrawn or as to the conditions subject to which any such permission is given;
  - (c) any decision as to whether or not approval of a pipe-line for the purposes of section 24 (control of movement of goods by pipe-line) is to be given or withdrawn or as to the conditions subject to which any such approval is given;
  - (d) any decision as to whether or not expenses incurred by the Commissioners are to be borne by any person by virtue of section 29(3) (expenses of detention etc. of ships, aircraft and vehicles) or as to the amount of the expenses to be so borne;
  - (e) any decision consisting in the giving of a direction under section 30(1) (control of uncleared goods);
  - (f) any decision by virtue of subsection (2A) of section 31 (control of movement of goods) as to whether or not the requirements of any regulations under subsection (1) of that section are to be relaxed, as to whether or not

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- substituted requirements are to be imposed or as to the terms of any such substituted requirements;
- (g) any decision consisting in the imposition of a requirement by virtue of subsection (3) of section 33 (requirements as to record keeping) on a person in control of an aerodrome who is not licensed under any enactment relating to air navigation or as to what is or is not to be approved (whether or not in relation to such a requirement) for the purposes of paragraph (a) of that subsection;
  - (h) any decision as to whether or not permission is to be given to any person for the purposes of section 39 (entry of surplus stores);
  - (i) any decision for the purposes of section 40 that any goods are to be deposited in a Queen's warehouse;
  - (j) any decision for the purposes of section 47 as to whether or not goods are allowed to be removed for transit or transhipment or as to the conditions subject to which they are removed;
  - (k) any decision as to the conditions subject to which any permission is given for the purposes of section 48 (temporary importation);
  - (l) any decision for the purposes of section 63 (entry outwards) as to whether or not entry outwards is to be made of any ship or goods or as to the conditions subject to which any such entry outwards is to be made;
  - (m) any decision consisting in the imposition of a requirement under section 77, 79 or 80 to produce or furnish any document or other evidence or information;
  - (n) any decision for the purposes of section 92 (approval of warehouses)—
    - (i) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse;
    - (ii) as to the conditions subject to which any approval or consent is given for the purposes of that section; or
    - (iii) for the withdrawal of any such approval or consent;
  - (o) any decision as to whether or not any amount is payable to the Commissioners in pursuance of section 99 (provision as to deposit in Queen's warehouse) or as to the amount to be so paid by any person;
  - (p) any decision for the purposes of section 100G (registered excise dealers and shippers) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions subject to which any person is approved and registered;
  - (q) any decision as to the conditions subject to which any drawback is allowed or payable under section 132 or 134;
  - (r) any decision under section 152(b) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;
  - (s) any decision under section 157 as to whether or not any person is to be required to give any security for the observance of any condition, as to the form or amount of, or the conditions of, any such security or as to the cancellation of any bond;
  - (t) any decision consisting in the giving or imposition of a direction or requirement for the purposes of section 158 (power to require the provision of facilities) or any decision as to whether or not an approval is to be given for the purposes of any such direction.

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- (2) Any decision which is made under or for the purposes of any regulations under any of sections 3, 31 or 93 of the Management Act (application to pipe-lines, control of movement of goods and warehousing regulations) and is—
  - (a) a decision in relation to any goods as to whether or not they may be moved, deposited, kept, secured, treated in any manner, removed or made available to any person or as to the conditions subject to which they are moved, deposited, kept, secured, treated in any manner, removed or made available to any person;
  - (b) a decision as to whether or not any person or place is to be, or to continue to be, authorised or approved in any respect for any purpose or as to the conditions subject to which any person or place is so authorised or approved; or
  - (c) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security.
- (3) Any decision which is made under or for the purposes of any regulations under section 35(4), 42 or 66 of the Management Act (report inwards, procedure in relation to goods on arrival etc. or in relation to goods for exportation) and is—
  - (a) a decision as to whether or not any permission is to be given for the purpose of dispensing with any of the requirements of any such regulations;
  - (b) a decision consisting in the imposition or variation of any requirement in exercise of any power conferred by any such regulations; or
  - (c) a decision as to whether or not any approval, authority or permission is to be given or granted for the purpose of determining the manner in which any requirement imposed by or under any such regulations is to be performed.
- (4) Any decision which is made under or for the purposes of any regulations under section 127A of the Management Act (deferment of duty) and is—
  - (a) a decision as to whether or not any person or place is to be, or to continue to be, approved for any purpose connected with the deferment of duty or as to the conditions subject to which any person or place is so approved;
  - (b) a decision as to the amount of duty that may be deferred in any case; or
  - (c) a decision as to whether or not any person is to be required to give any security for the fulfilment of any obligation or as to the form or amount of, or the conditions of, any such security.

*The Alcoholic Liquor Duties Act 1979*

- 3 (1) The following decisions under or for the purposes of the <sup>M10</sup>Alcoholic Liquor Duties Act 1979, that is to say—
  - (a) any decision for the purposes of section 6 (power to exempt angostura bitters) as to whether or not to give a direction that any bitters are to be treated as not being spirits or as to the conditions subject to which any such direction is given;
  - (b) any decision for the purposes of section 7 (exemption of spirits used for medical purposes) as to whether or not to recognise any article as used for medical purposes;

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- (c) any decision for the purposes of section 8 (remission of duty on spirits used for medical purposes etc.)—
  - (i) as to the use to which any article is or is to be put or as to the purposes for which it is or is to be used; or
  - (ii) as to the conditions subject to which the receipt and delivery of any spirits is permitted as mentioned in that section;
- (d) any decision for the purposes of section 9 or 10 (remission of duty on spirits for methylation or for use in art or manufacture) as to whether or not permission or authorisation for any person to receive, or for the delivery of, any spirits without payment of duty is to be granted or withdrawn or as to the conditions subject to which any such permission or authorisation is granted;
- (e) any decision as to whether or not any goods are to be directed under section 11 (goods not for human consumption) to be treated as not containing spirits or as to the conditions subject to which any goods are directed to be so treated;
- (f) any decision for the purposes of section 12 (licences to manufacture spirits) as to whether or not a licence under that section is to be granted or as to the suspension or revocation of such a licence or as to the conditions subject to which such a licence is granted;
- (g) any decision for the purposes of section 15 (distillers' warehouses)—
  - (i) as to whether or not any approval is to be given to any place as a warehouse or any consent is to be given to any alteration in or addition to any warehouse;
  - (ii) as to the conditions subject to which any approval or consent is given for the purposes of that section; or
  - (iii) for the withdrawal of any such approval or consent;
- (h) any decision for the purposes of section 18 (licences for rectifiers and compounders)—
  - (i) as to whether or not any person is to be granted a licence as a rectifier or compounder or permission to compound spirits without a licence;
  - (ii) as to the conditions subject to which any such licence or permission is granted; or
  - (iii) as to the revocation or withdrawal of any such licence or permission;
- (i) any decision for the purposes of section 32 (transfer of spirits in a distiller's warehouse) as to whether or not any person is to be required to give any security for the payment of any duty or as to the form or amount of, or the conditions of, any such security;
- (j) any decision as to whether or not drawback is to be allowed in any case under section 42 (drawback on exportation etc.) or as to the conditions subject to which drawback is so allowed;
- (k) any decision as to whether or not any duty is to be remitted or repaid under section 44 (remission or repayment of duty on beer used for the purposes of research or experiment) or as to the conditions subject to which any duty is so remitted or repaid;
- (l) any decision for the purposes of section 49A as to whether or not any drawback is to be set against an amount chargeable in respect of excise duty on beer or as to the conditions subject to which any drawback is set against any such amount;
- (m) any decision as to whether or not any permission for the purposes of section 57 or 58 (mixing of made-wine or wine with spirits) is to be given

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- or withdrawn or as to the conditions subject to which any such permission is given;
- (n) any decision as to whether or not any permission for the purposes of subsection (1) or (2) of section 69 (restrictions applying to wholesalers and retailers of spirits) is to be given or withdrawn or as to the conditions subject to which any such permission is given;
  - (o) any decision as to whether or not an authorisation or licence for the purposes of section 75 (methylated spirits and denatured alcohol) is to be granted to any person or as to the revocation or suspension of any such authorisation or licence.
- (2) Any decision which is made under or for the purposes of any regulations under section 13 or 77 of the <sup>M11</sup>Alcoholic Liquor Duties Act 1979 (regulation of the manufacture of spirits, methylated spirits and denatured alcohol) and is a decision as to whether or not any premises, plant or process is to be, or to continue to be, approved for any purpose or as to the conditions subject to which any premises, plant or process is so approved.
- (3) Any decision which is made under or for the purposes of section 55, or any regulations under section 56, of the <sup>M12</sup>Alcoholic Liquor Duties Act 1979 (regulation of the making of wine and made-wine) and is a decision as to whether or not a licence under that section is to be granted or cancelled.

#### Marginal Citations

- M10 1979 c. 4.
- M11 1979 c. 4.
- M12 1979 c. 4.

#### *The Hydrocarbon Oil Duties Act 1979*

- 4 (1) The following decisions under or for the purposes of the <sup>M13</sup>Hydrocarbon Oil Duties Act 1979—
- (a) any decision under section 9 (delivery of oil for home use etc.) as to whether or not permission is to be given for the delivery of anything without payment of duty or as to the conditions subject to which any such permission is given;
  - (b) any decision as to whether or not a consent is to be given for the purposes of section 10(1) (consent to certain uses of oil delivered for home use) or as to the conditions subject to which any such consent is given;
  - (c) any decision as to whether or not a consent is to be given for the purposes of section 14(2) (consent to certain uses of rebated oil) or as to the conditions subject to which any such consent is given;
  - (d) any decision consisting in a determination for the purposes of section 17(3) (determination of use of oil etc. for different purposes);
  - (e) any decision as to the conditions subject to which any payment is to be made to any person in accordance with section 20(3) (payments in respect of contaminated or mixed substances).

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- (2) Any decision which is made under or for the purposes of any regulations made or having effect as if made under section 21 or 24 of the <sup>M14</sup>Hydrocarbon Oil Duties Act 1979 and is—
- (a) a decision as to whether or not any person is to be required to give any security for any duty which is or may become due, or as to the form or amount of, or the conditions of, any such security; or
  - (b) a decision as to whether or not any person is to be, or to continue to be, approved for the purposes of section 9(1) or (4), 14(1) or 19A(1) of that Act or as to the conditions subject to which any person is so approved.

**Marginal Citations**

**M13** 1979 c. 5.

**M14** 1979 c. 5.

*The Tobacco Products Duty Act 1979*

- 5 Any decision which is made under or for the purposes of any regulations made under section 2 or 7 of the <sup>M15</sup>Tobacco Products Duty Act 1979 and is—
- (a) a decision as to whether or not any duty is remitted or repaid or as to the conditions subject to which it is remitted or repaid; or
  - (b) a decision as to whether or not any premises are to be, or to continue to be, registered for any purpose or as to the conditions subject to which any premises are so registered.

**Marginal Citations**

**M15** 1979 c. 7.

*The Betting and Gaming Duties Act 1981*

- 6 (1) The following decisions under or for the purposes of the <sup>M16</sup>Betting and Gaming Duties Act 1981, that is to say—
- (a) any decision as to whether or not a permit under paragraph 5 of Schedule 1 (permit for carrying on pool betting business) is to be granted to any person or as to the revocation of such a permit;
  - (b) any decision under paragraph 10(2) of Schedule 3 (registration of bingo promoters) as to the conditions subject to which any person is to be, or to continue to be, registered as a bingo-promoter.
- (2) Any decision which is made under or for the purposes of—
- (a) any regulations under paragraph 2 of Schedule 1 to the <sup>M17</sup>Betting and Gaming Duties Act 1981 (regulations in relation to general betting duty), or
  - (b) paragraph 10(2) of Schedule 3 to that Act,
- and is a decision as to whether or not any person is to be required to give any security for any duty which is or may become due, or as to the form or amount of, or the conditions of, any such security.

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**Marginal Citations**

**M16** 1981 c. 63.

**M17** 1981 c. 63.

*The Finance Act 1993*

- 7 Any decision as to whether or not any person is to be or to continue to be registered under section 29 of the <sup>M16</sup>Finance Act 1993 (registration for the purposes of lottery duty) and any decision which is made under or for the purposes of any regulations under that section and is a decision as to whether or not any person is to be required to give any security for the payment of any lottery duty that may become due, or as to the form or amount of, or the conditions of, any such security.

**Marginal Citations**

**M18** 1993 c. 34.

*Chapter III of Part I of this Act*

- 8 (1) Any decision made under or for the purposes of any regulations under section 21 of this Act or for the purposes of subsection (2) of that section which is—
- (a) a decision consisting in the imposition or variation of any requirement as to the records which are to be kept by any person;
  - (b) a decision as to the manner in which any record or information is to be preserved or is to be made available to the Commissioners; or
  - (c) a decision as to the period for which any record or information is to be preserved.
- (2) Any decision for the purposes of section 23 of this Act which is—
- (a) a decision consisting in the imposition or variation of any requirement as to the information or documents which are to be furnished or produced by any person, including any decision as to the time or place at which, period within which or form in which anything is to be furnished or produced in pursuance of that section; or
  - (b) a decision as to the removal of any document produced under that section or as to the period for which such a document may be removed.

*Chapter IV of Part I of this Act*

- 9 The following decisions under or for the purposes of Chapter IV of Part I of this Act, that is to say—
- (a) any decision under regulations made by virtue of section 33 to register, or not to register, any person as an aircraft operator in the register kept under that section or to remove a person so registered from the register;
  - (b) any decision under such regulations to show, or not to show, the name of any person as a fiscal representative in that register or to remove a name from the register;

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- (c) any decision under section 36 to require a person to provide security, including any decision as to the form or amount of the security; <sup>F30</sup> . . .
- (d) any decision to give a person a notice under section 37.
- [<sup>F31</sup>(e) any decision with respect to the amount of any interest specified in an assessment under paragraph 11A of Schedule 6;]

#### Textual Amendments

**F30** Word in Sch. 5 immediately preceding para. 9(d) repealed (1.5.1995 with effect as mentioned in s. 16(4) of the repealing Act) by 1995 c. 4, ss. 16(2), 162, **Sch. 29 Pt. IV**, Note

**F31** Sch. 5 para. 9(e) inserted (1.5.1995 with effect as mentioned in s. 16(4) of the amending Act) by 1995 c. 4, s. 16(2)

#### Commencement Information

**II** Sch. 5 para. 9 wholly in force at 1.1.1995; Sch. 5 para. 9 not in force at Royal Assent see s. 19(1); Sch. 5 para. 9 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, **Sch.**; Sch. 5 para. 9 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

VALID FROM 01/11/2001

#### *The Finance Act 2001*

[<sup>F32</sup>9A Any decision under or for the purposes of Part 2 of Schedule 3 to the Finance Act 2001 (interest).]

#### Textual Amendments

**F32** Sch. 5 para. 9A inserted (1.11.2001) by 2001 c. 9, s. 15, **Sch. 3 paras. 17(4)**; S.I. 2001/3300, art. 2

#### *Interpretation of Schedule*

- 10 (1) In this Schedule references to any decision as to the conditions subject to which any other decision (whether or not specified in this Schedule) is made include references to—
- (a) any decision as to whether the other decision should be made subject to or to the imposition of any conditions, limitations, restrictions, prohibitions or other requirements, either from the time when the other decision takes effect or in exercise of any power to impose them subsequently;
  - (b) any decision as to the terms of any conditions, limitations, restrictions, prohibitions or other requirements imposed or applied in relation to that other decision;
  - (c) any decision as to the period for which any licence, approval, permission or other authorisation to which the other decision relates is to have effect or as to any variation of that period; and
  - (d) any decision as to whether any conditions, limitations, restrictions, prohibitions or other requirements so imposed or applied are to be revoked, suspended or cancelled or as to whether or in what respect their terms are at any time to be varied;

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but those references do not include references to any decision as to the enforcement of any condition, restriction or prohibition in criminal proceedings, by the seizure or forfeiture of goods or, for purposes connected with any duty of excise, by any other means.

- (2) References in this Schedule to decisions as to the exercise of any power to require security for the fulfilment of any obligation, the observance of any conditions or the payment of any duty shall be without prejudice to any reference to decisions as to the exercise of any general power in the case in question to impose conditions in connection with the making of any other decision and shall include references to the exercise of any power to require further security for the fulfilment of that obligation, the observance of those conditions or, as the case may be, the payment of that duty.

#### Commencement Information

- I2** Sch. 5 para. 10 wholly in force at 1.1.1995; Sch. 5 para. 10 not in force at Royal Assent see s. 19(1); Sch. 5 para. 10 in force for certain purposes at 1.11.1994 by [S.I. 1994/2679](#), [art. 2](#), [Sch.](#); Sch. 5 para. 10 in force at 1.1.1995 insofar as not already in force by [S.I. 1994/2679](#), [art. 3](#)

## SCHEDULE 6

Section 40.

### AIR PASSENGER DUTY: ADMINISTRATION AND ENFORCEMENT

#### *Application of excise enactments*

- 1 (1) The <sup>M19</sup>Customs and Excise Management Act 1979 shall have effect for the purposes of Chapter IV of Part I of this Act in relation to—
- any person who is or is liable to be registered,
  - any fiscal representative, and
  - any handling agent where a notice given to him under section 37 of this Act is effective,
- as it has effect in relation to revenue traders, but with the modifications mentioned in sub-paragraph (2), and paragraphs 3 and 4, below.
- (2) That Act shall have effect, in relation to any person to whom sub-paragraph (1) above applies, as if—
- the reference in section 112(1) (power of entry) to vehicles included aircraft,
  - section 116 (payment of duty) were omitted,
  - in section 117 (execution and distress)—
    - the references to goods liable to any excise duty included tickets, and
    - the references to the trade in respect of which duty is imposed were to the trade or business by virtue of which sub-paragraph (1) above applies to him, and
  - any power under section 118B(1)(b) to require any person who is or is liable to be registered to produce or cause to be produced any such documents as are referred to in that subsection included power to require his fiscal representative to produce them.

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### **Marginal Citations**

**M19** 1979 c. 2.

- 2 Section 118B of that Act shall have effect for the purposes of Chapter IV of Part I of this Act in relation to any person who, in the course of a trade or business carried on by him, issues or arranges for the issue of tickets as if—
- (a) he were a revenue trader, and
  - (b) the references to services supplied by or to him in the course or furtherance of a business were to services supplied by or to him in the course of issuing or arranging for the issue of tickets.
- 3 (1) A notice may require any person to whom paragraph 1 above applies to furnish, at specified times and in the specified form, any such information to the Commissioners as he could be required by the Commissioners to furnish under subsection (1) of section 118B; and any such requirement shall have effect as a requirement under that subsection.
- (2) A notice may require any person to whom paragraph 1 or 2 above applies to produce or cause to be produced for inspection by an officer, at specified places and times, any such documents as he could be required by the officer to produce under that subsection; and any such requirement shall have effect as a requirement under that subsection.
- (3) In this paragraph—
- “notice” means a notice published, and not withdrawn, by the Commissioners, and
- “specified” means specified in such a notice.
- 4 In relation to any person to whom paragraph 1 or 2 above applies—
- (a) that Act shall have effect as if “document” had the same meaning as in Chapter IV of Part I of this Act, and
  - (b) that Act and this Schedule shall have effect as if any reference to the production of any document, in the case of information recorded otherwise than in legible form, were to producing a copy of the information in legible form.

### *Information*

- 5 (1) Any person having the management of an airport shall, if required to do so by the Commissioners—
- (a) give notice to the Commissioners, within such time and in such form as they may reasonably require, stating whether or not he holds or has at any time held any information relating to the matters mentioned in subparagraph (3) below and, if he does or has done, stating the general nature of the information, and
  - (b) furnish to the Commissioners, within such time and in such form as they may reasonably require, such information relating to such matters as they may reasonably specify.
- (2) Any such person shall, if required to do so by an officer, produce any documents relating to those matters, or cause them to be produced, for inspection by that officer.

*Status: Point in time view as at 01/04/1996.*

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- (3) The matters referred to in sub-paragraphs (1) and (2) above are—
  - (a) whether or not any aircraft is a chargeable aircraft,
  - (b) who is the operator of any aircraft,
  - (c) whether or not any person is a handling agent of the operator of any aircraft, and
  - (d) whether or not any duty is payable on the carriage of any person and, if so, the amount of duty.
- (4) Documents produced under sub-paragraph (2) above shall be produced, at such time as the officer may reasonably require, at the principal place of business of the person required to produce them or cause them to be produced or at such other place as the officer may reasonably require.
- (5) An officer may take copies of, or make extracts from, any document produced under this paragraph.
- (6) If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under this paragraph.
- (7) Where an officer removes a document under sub-paragraph (6) above, then—
  - (a) if the person from whom it is removed so requests, the officer shall give him a receipt for the document,
  - (b) if the document is reasonably required for the proper conduct of any business, the officer shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced, and
  - (c) if the document is lost or damaged, the Commissioners shall be liable to compensate the owner for any expenses reasonably incurred by him in replacing or repairing it.
- (8) Any reference in this paragraph to the production of a document, in the case of information recorded otherwise than in legible form, is to producing a copy of the information in legible form.
- (9) Any failure by a person having the management of an airport to comply with a requirement imposed under this paragraph shall attract a penalty under section 9 of this Act.

#### *Application of Chapter II*

- 6 An appeal which relates to duty shall not be entertained under section 16 of this Act at any time if any return which the appellant is required by regulations made by virtue of section 38 of this Act to make has not at that time been made.

#### *Interest payable to Commissioners*

- 7 (1) Where an assessment of duty due from any person (“the person assessed”) is made under section 12 of this Act and any of the conditions in sub-paragraph (2) below is fulfilled, the whole of the amount assessed shall, subject to paragraph 8 below, carry interest at the specified rate from the reckonable date until payment.
- (2) The conditions are—

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- (a) that the assessment relates to an accounting period in respect of which either a return has previously been made or an earlier assessment has already been notified to the person assessed, or
  - (b) that the assessment relates to an accounting period which exceeds one month and begins on the date on which the person assessed was, or became liable to be, registered.
- (3) In a case where—
- (a) the circumstances are such that an assessment of duty due from any person could have been made and, if it had been made, the conditions in sub-paragraph (2) above would have been fulfilled, but
  - (b) before such an assessment was made the duty was paid (so that no such assessment was necessary),
- the whole of the amount paid shall carry interest at the specified rate from the reckonable date until the date on which it was paid.
- (4) In this paragraph and paragraph 8 below the “reckonable date” means the latest date on which a return is required to be made under Chapter IV of Part I of this Act for the accounting period to which the amount assessed or paid relates; and interest under this paragraph shall run from the reckonable date even if that date is a non-business day, within the meaning of section 92 of the <sup>M20</sup>Bills of Exchange Act 1882.
- (5) Interest under this paragraph shall be paid without any deduction of income tax.

**Marginal Citations**

**M20** 1882 c. 61.

- 8 (1) Where on an appeal by any person (“the appellant”) to a tribunal under section 16 of this Act against an assessment of duty—
- (a) it is found that the whole or any part of the duty was due from him, and
  - (b) the amount due, or any part of that amount, has not been paid and no cash security has been given for it,
- that amount or, as the case may be, that part of it shall carry interest at such rate as the tribunal may determine from the reckonable date until payment.
- (2) In sub-paragraph (1) above, “cash security” means such adequate security as enables the Commissioners to place the amount in question on deposit.
- (3) Interest under this paragraph shall be paid without any deduction of income tax.

*Interest payable by the Commissioners*

- 9 (1) Where, due to an error on the part of the Commissioners, a person has paid by way of duty an amount which was not due and which the Commissioners are in consequence liable to repay to him, they shall (subject to the following provisions of this paragraph and paragraph 10) pay interest to him on that amount at the specified rate for the applicable period (if and to the extent that they would not be liable to do so apart from this paragraph).

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- [<sup>F33</sup>(1A) In sub-paragraph (1) above the reference to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied.]
- (2) For the purposes of this paragraph the applicable period is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable;
- but in determining that period for those purposes there shall be left out of account any period referable to the raising and answering of any reasonable enquiry relating to any matter giving rise to, or otherwise connected with, the person's entitlement to interest under this paragraph.
- (3) In determining for the purposes of sub-paragraph (2) above whether any period is referable to the raising and answering of such an enquiry as is there mentioned, there shall be taken to be so referable any period which begins with the date on which the Commissioners first consider it necessary to make such an enquiry and ends with the date on which the Commissioners—
- (a) satisfy themselves that they have received a complete answer to the enquiry, or
  - (b) determine not to make the enquiry or (if they have made it) not to pursue it further;
- but excluding so much of that period as may be prescribed.
- (4) For the purposes of sub-paragraph (3) above it is immaterial—
- (a) whether any enquiry is in fact made, or
  - (b) whether any enquiry is or might have been made of the person referred to in sub-paragraph (1) above or of an authorised person or of some other person.
- (5) The Commissioners shall only be liable to pay interest under this paragraph on a claim made in writing for that purpose.
- [<sup>F34</sup>(6) A claim under this paragraph shall not be made more than three years after the end of the applicable period to which it relates.]
- [<sup>F35</sup>(7) Any reference in this paragraph to the authorisation by the Commissioners of the payment of any amount includes a reference to the discharge by way of set-off of the Commissioners' liability to pay that amount.]

#### Textual Amendments

- F33** Sch. 6 para. 9(1A) inserted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 7(1)(2)**  
**F34** Sch. 6 para. 9(6) substituted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 7(1)(3)**  
**F35** Sch. 6 para. 9(7) substituted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 7(1)(4)**

- 9 (1) Where, due to an error on the part of the Commissioners, a person has paid by way of duty an amount which was not due and which the Commissioners are in consequence liable to repay to him, they shall (subject to the following provisions of this paragraph and paragraph 10) pay interest to him on that amount at the specified rate for the

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applicable period (if and to the extent that they would not be liable to do so apart from this paragraph).

- (2) For the purposes of this paragraph the applicable period is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable;
- but in determining that period for those purposes there shall be left out of account any period referable to the raising and answering of any reasonable enquiry relating to any matter giving rise to, or otherwise connected with, the person's entitlement to interest under this paragraph.
- (3) In determining for the purposes of sub-paragraph (2) above whether any period is referable to the raising and answering of such an enquiry as is there mentioned, there shall be taken to be so referable any period which begins with the date on which the Commissioners first consider it necessary to make such an enquiry and ends with the date on which the Commissioners—
- (a) satisfy themselves that they have received a complete answer to the enquiry, or
  - (b) determine not to make the enquiry or (if they have made it) not to pursue it further;
- but excluding so much of that period as may be prescribed.
- (4) For the purposes of sub-paragraph (3) above it is immaterial—
- (a) whether any enquiry is in fact made, or
  - (b) whether any enquiry is or might have been made of the person referred to in sub-paragraph (1) above or of an authorised person or of some other person.
- (5) The Commissioners shall only be liable to pay interest under this paragraph on a claim made in writing for that purpose.
- (6) No claim shall be made under this paragraph after the expiry of six years from the date on which the claimant discovered the error or could with reasonable diligence have discovered it.
- (7) Any reference in this paragraph to receiving a payment from the Commissioners includes a reference to the discharge, by way of set-off, of their liability to make it.

- 10 (1) Where a person (“the appellant”) who appeals to a tribunal under section 16 of this Act against an assessment of duty has paid, or given cash security for, the whole or any part of the duty, sub-paragraph (2) below shall apply if the tribunal find that the whole or any part of the amount paid or secured is not due.
- (2) The Commissioners shall pay interest to the appellant, at such rate as the tribunal may determine, on—
- (a) so much of the duty paid as is found not to be due or,
  - (b) so much of the cash security as relates to duty found not to be due,
- for the period beginning with the payment of duty or, as the case may be, giving of the cash security and ending with its repayment.

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- (3) In this paragraph “cash security” means such adequate security as enables the Commissioners to place the amount in question on deposit.

*Interest: specified rate*

- 11 (1) In paragraphs 7 and 9 above, “the specified rate” means such rate as may be specified in an order.
- (2) An order specifying rates of interest—
- (a) may specify different rates for different purposes,
  - (b) shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date.

*[<sup>F36</sup> Assessment of interest]*

#### Textual Amendments

**F36** Sch. 6: Cross-heading and para. 11A inserted (1.5.1995 with application as mentioned in s. 16(4) of the amending Act) by 1995 c. 4, s. 16(1)

- <sup>F37</sup>11A(1) Where by virtue of paragraph 7 above duty due from any person for an accounting period carries interest, the Commissioners may assess that person to an amount of interest in accordance with this paragraph.
- (2) Notice of the assessment shall be given to the person liable for the interest or a representative of his.
- (3) The amount of the interest shall be calculated by reference to a period ending on a date (“the due date”) no later than the date of the notice.
- (4) The notice shall specify—
- (a) the amount of the duty which carries the interest assessed (“the specified duty”);
  - (b) the amount of the interest assessed (“the specified interest”);
  - (c) the due date; and
  - (d) a date by which that amount is required to be paid (“the payment date”).
- (5) Sub-paragraphs (6) and (7) below apply where the specified duty or any part of it is unpaid on the date of the notice.
- (6) If the unpaid amount or any part of it is paid by the payment date, the payment shall be treated for the purposes of paragraph 7 above as made on the due date.
- (7) To the extent that the unpaid amount is not paid by the payment date, an assessment may be made under this paragraph in respect of any interest on the unpaid amount which accrues after the due date.
- (8) For the purposes of sub-paragraphs (6) and (7) above, a payment—
- (a) which purports to be a payment of the unpaid amount or any part of it, but

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- (b) which is insufficient to discharge both the liability to pay the unpaid amount and the liability to pay the specified interest,  
 shall be treated as made in discharge (or partial discharge) of the liability to pay the specified interest before it is treated as discharging to any extent the liability to pay the unpaid amount.
- (9) A notice of interest assessed under this paragraph may be combined in one document with notification of an assessment under section 12 of this Act which relates to the specified duty.
- (10) A notice which is so combined must comply with the requirements of this paragraph which relate to a notice which is not so combined.
- (11) The specified interest shall be recoverable as if it were duty due from the person assessed to that interest.
- (12) For the purposes of this paragraph a person is a representative of another if—
- (a) he is that other's personal representative;
  - (b) he is that other's trustee in bankruptcy or is a receiver or liquidator appointed in relation to that other or in relation to any of his property; or
  - (c) he is a person acting in some other representative capacity in relation to that other.]

#### Textual Amendments

**F37** Sch. 6: Cross-heading and para. 11A inserted (1.5.1995 with application as mentioned in s. 16(4) of the amending Act) by 1995 c. 4, s. 16(1) (with Sch. 8 paras. 55(2) 57(1))

#### *Evidence by certificate*

- 12 (1) A certificate of the Commissioners—
- (a) that a person was or was not, on any date specified in the certificate, registered or liable to be registered under section 33 of this Act,
  - (b) that the name of any person was or was not, on any date so specified, shown as the fiscal representative of any person in the register kept under that section,
  - (c) that any aircraft was or was not, on any date so specified, a chargeable aircraft,
  - (d) that any return required to be made under regulations made by virtue of section 38 of this Act had not, on any date so specified, been made, or
  - (e) that any duty shown as due in such a return, or in an assessment under section 12 of this Act, had not, on any date so specified, been paid,
- shall be sufficient evidence of that fact until the contrary is proved.
- (2) A photograph of any document furnished to the Commissioners for the purposes of Chapter IV of Part I of this Act and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.
- (3) Any document purporting to be a certificate under sub-paragraph (1) or (2) above shall be taken to be such a certificate until the contrary is proved.

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### *Preferential debt*

- 13 (1) In Schedule 6 to the <sup>M21</sup>Insolvency Act 1986 (categories of preferential debts) in Category 2 (debts due to Customs and Excise) after paragraph 5B there shall be inserted—
- “5C Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.”
- (2) In Schedule 3 to the <sup>M22</sup>Bankruptcy (Scotland) Act 1985 (list of preferred debts) at the end of paragraph 2 (debts due to Customs and Excise) there shall be added—
- “(6) Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.”
- (3) In Schedule 4 to the <sup>M23</sup>Insolvency (Northern Ireland) Order 1989 (categories of preferential debts) in Category 2 (debts due to Customs and Excise) after paragraph 5B there shall be inserted—
- “5C Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.”

#### **Marginal Citations**

- M21** 1986 c. 45.  
**M22** 1985 c. 66.  
**M23** S.I. 1989/2405 (N.I. 19)

VALID FROM 19/03/1997

## **[<sup>F38</sup>SCHEDULE 6A**

Section 51A.

### **PREMIUMS LIABLE TO TAX AT THE HIGHER RATE**

#### **Textual Amendments**

- F38** Sch. 6A inserted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 22(3), Sch. 4

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## SCHEDULE 7

Section 64.

## INSURANCE PREMIUM TAX

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

**C2** Sch. 7 extended (19.3.1997) by 1997 c. 16, s. 50, Sch. 5 Pt. I paras. 1, 4(2)

**PART I**

## INFORMATION

*Records*

- 1 (1) Regulations may require registrable persons to keep records.
- (2) Regulations under sub-paragraph (1) above may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (3) Regulations may require any records kept in pursuance of the regulations to be preserved for such period not exceeding six years as may be specified in the regulations.
- (4) Any duty under regulations to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve; and where that information is so preserved a copy of any document forming part of the records shall (subject to the following provisions of this paragraph) be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.
- (5) The Commissioners may, as a condition of approving under sub-paragraph (4) above any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved.
- (6) A statement contained in a document produced by a computer shall not by virtue of sub-paragraph (4) above be admissible in evidence—
  - (a) in civil proceedings in England and Wales, except in accordance with sections 5 and 6 of the <sup>M26</sup>Civil Evidence Act 1968;
  - (b) in criminal proceedings in England and Wales, except in accordance with sections 69 and 70 of the <sup>M27</sup>Police and Criminal Evidence Act 1984 and Part II of the <sup>M28</sup>Criminal Justice Act 1988;
  - (c) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the <sup>M29</sup>Civil Evidence (Scotland) Act 1988;
  - (d) in criminal proceedings in Scotland, except in accordance with [<sup>F39</sup>Schedule 8 to the Criminal Procedure (Scotland) Act 1995];

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- (e) in civil proceedings in Northern Ireland, except in accordance with sections 2 and 3 of the <sup>M30</sup>Civil Evidence Act (Northern Ireland) 1971;
- (f) in criminal proceedings in Northern Ireland, except in accordance with Article 68 of the <sup>M31</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 and Part II of the <sup>M32</sup>Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

#### Textual Amendments

**F39** Words in [Sch. 7 para. 1\(6\)\(d\)](#) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\), Sch. 4 para. 89\(4\)](#)

#### Marginal Citations

**M26** [1968 c. 64.](#)  
**M27** [1984 c. 60.](#)  
**M28** [1988 c. 33.](#)  
**M29** [1988 c. 32.](#)  
**M30** [1971 c. 36 \(N.I.\).](#)  
**M31** [S.I.1989/1341 \(N.I.12\).](#)  
**M32** [S.I.1988/1847 \(N.I.17\).](#)

#### *Other provisions*

- 2
- (1) Every person who is concerned (in whatever capacity) in [<sup>F40</sup>an insurance business] shall furnish to the Commissioners such information relating to [<sup>F40</sup>contracts of insurance] entered into in the course of the business as the Commissioners may reasonably require.
  - (2) Every person who makes arrangements for other persons to enter into any [<sup>F40</sup>contract of insurance] shall furnish to the Commissioners such information relating to that contract as the Commissioners may reasonably require.
  - (3) Every person who—
    - (a) is concerned in a business that is not [<sup>F40</sup>an insurance business], and
    - (b) has been involved in the entry into any [<sup>F40</sup>contract of insurance] providing cover for any matter associated with the business,shall furnish to the Commissioners such information relating to that contract as the Commissioners may reasonably require.
  - (4) The information mentioned in sub-paragraph (1), (2) or (3) above shall be furnished within such time and in such form as the Commissioners may reasonably require.

#### Textual Amendments

**F40** Words in [Sch. 7 para. 2\(1\)-\(3\)](#) substituted (1.5.1995 with application in relation to contracts whether entered into before or after the passing of the amending Act) by [1995 c. 4, s. 34, Sch. 5 para. 7](#)

- 3
- (1) Every person who is concerned (in whatever capacity) in [<sup>F41</sup>an insurance business] shall upon demand made by an authorised person produce or cause to be produced for inspection by that person any documents relating to [<sup>F41</sup>contracts of insurance] entered into in the course of the business.

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- (2) Every person who makes arrangements for other persons to enter into any [<sup>F41</sup>contract of insurance] shall upon demand made by an authorised person produce or cause to be produced for inspection by that person any documents relating to that contract.
- (3) Every person who—
- (a) is concerned in a business that is not [<sup>F41</sup>an insurance business], and
  - (b) has been involved in the entry into any [<sup>F41</sup>contract of insurance] providing cover for any matter associated with the business,
- shall upon demand made by an authorised person produce or cause to be produced for inspection by that person any documents relating to that contract.
- (4) Where, by virtue of any of sub-paragraphs (1) to (3) above, an authorised person has power to require the production of any documents from any person, he shall have the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; but where any such other person claims a lien on any document produced by him, the production shall be without prejudice to the lien.
- (5) The documents mentioned in sub-paragraphs (1) to (4) above shall be produced—
- (a) at the principal place of business of the person on whom the demand is made or at such other place as the authorised person may reasonably require, and
  - (b) at such time as the authorised person may reasonably require.
- (6) An authorised person may take copies of, or make extracts from, any document produced under any of sub-paragraphs (1) to (4) above.
- (7) If it appears to him to be necessary to do so, an authorised person may, at a reasonable time and for a reasonable period, remove any document produced under any of sub-paragraphs (1) to (4) above and shall, on request, provide a receipt for any document so removed; and where a lien is claimed on a document produced under sub-paragraph (4) above the removal of the document under this sub-paragraph shall not be regarded as breaking the lien.
- (8) Where a document removed by an authorised person under sub-paragraph (7) above is reasonably required for the proper conduct of a business he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.
- (9) Where any documents removed under the powers conferred by this paragraph are lost or damaged the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

#### Textual Amendments

**F41** Words in [Sch. 7 para. 3\(1\)-\(3\)](#) substituted (1.5.1995 with application in relation to contracts whether entered into before or after the passing of the amending Act) by [1995 c. 4, s. 34](#), [Sch. 5 para. 7](#)

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## PART II

### POWERS

#### *Entry, arrest, etc.*

- 4 (1) For the purpose of exercising any powers under this Part of this Act an authorised person may at any reasonable time enter premises used in connection with the carrying on of a business.
- (2) In a case where—
- (a) a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that a fraud offence which appears to be of a serious nature is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, or
  - (b) in Scotland a justice, within the meaning of [F42]section 308 of the Criminal Procedure (Scotland) Act 1995], is satisfied by evidence on oath as mentioned in paragraph (a) above,
- he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within one month from the time of the issue of the warrant and search them.
- (3) A person who enters the premises under the authority of the warrant may—
- (a) take with him such other persons as appear to him to be necessary;
  - (b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature;
  - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such documents or other things;
- but no woman or girl shall be searched except by a woman.
- (4) The powers conferred by a warrant under this paragraph shall not be exercisable—
- (a) by more than such number of authorised persons as may be specified in the warrant,
  - (b) outside such times of day as may be so specified, or
  - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.
- (5) An authorised person seeking to exercise the powers conferred by a warrant under this paragraph or, if there is more than one such authorised person, that one of them who is in charge of the search shall provide a copy of the warrant endorsed with his name as follows—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;
  - (b) if at that time the occupier is not present but a person who appears to the authorised person to be in charge of the premises is present, the copy shall be supplied to that person;
  - (c) if neither paragraph (a) nor paragraph (b) above applies, the copy shall be left in a prominent place on the premises.

*Status: Point in time view as at 01/04/1996.*

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- (6) Where an authorised person has reasonable grounds for suspecting that a fraud offence has been committed he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.
- (7) In this paragraph “a fraud offence” means an offence under any provision of paragraph 9(1) to (5) below.

#### Textual Amendments

**F42** Words in Sch. 7 para. 4(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 89(4)(b)**

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

**C3** Sch. 7 para. 4(3): power of seizure extended (*prosp.*) by 2001 c. 16, ss. 50-55, 68, 138(2), **Sch. 1 Pt. 1 para. 57**

*[<sup>F43</sup> Order for access to recorded information etc.]*

#### Textual Amendments

**F43** Sch. 7 para. 4A and the preceding cross-heading inserted (1.5.1995) by 1995 c. 4, s. 34, **Sch. 5 para. 8(1)**

- <sup>F44</sup>4A (1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 462 of the <sup>M33</sup>Criminal Procedure (Scotland) Act 1975) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with tax is being, has been or is about to be committed, and
  - (b) that any recorded information (including any document of any nature whatsoever) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person, he may make an order under this paragraph.
- (2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—
- (a) give an authorised person access to it, and
  - (b) permit an authorised person to remove and take away any of it which he reasonably considers necessary,
- not later than the end of the period of 7 days beginning on the date of the order or the end of such longer period as the order may specify.
- (3) The reference in sub-paragraph (2)(a) above to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it.
- (4) Where the recorded information consists of information contained in a computer, an order under this paragraph shall have effect as an order to produce the information in a form in which it is visible and legible and, if the authorised person wishes to remove it, in a form in which it can be removed.
- (5) This paragraph is without prejudice to paragraphs 3 and 4 above.

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#### Textual Amendments

**F44** Sch. 7 para. 4A and the preceding cross-heading inserted (1.5.1995) by 1995 c. 4, s. 34, Sch. 5 para. 8(1)

#### Marginal Citations

**M33** 1975 c. 21.

#### *Removal of documents etc.*

- 5 (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 4 [<sup>F45</sup> or 4A] above shall, if so requested by a person showing himself—
- (a) to be the occupier of premises from which it was removed, or
  - (b) to have had custody or control of it immediately before the removal,
- provide that person with a record of what he removed.
- (2) The authorised person shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to sub-paragraph (7) below, if a request for permission to be allowed access to anything which—
- (a) has been removed by an authorised person, and
  - (b) is retained by the Commissioners for the purposes of investigating an offence,
- is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an authorised person.
- (4) Subject to sub-paragraph (7) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Subject to sub-paragraph (7) below, where anything is photographed or copied under sub-paragraph (4)(b) above the officer shall supply the photograph or copy, or cause it to be supplied, to the person who made the request.
- (6) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (7) There is no duty under this paragraph to allow access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation,
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed, or

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- (c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b) above.
- (8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.

#### Textual Amendments

**F45** Words in [Sch. 7 para. 5\(1\)](#) inserted (1.5.1995) by [1995 c. 4, s. 34, Sch. 5 para. 8\(2\)](#)

- 6 (1) Where, on an application made as mentioned in sub-paragraph (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 5 above, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.
- (2) An application under sub-paragraph (1) above shall be made—
- in the case of a failure to comply with any of the requirements imposed by sub-paragraphs (1) and (2) of paragraph 5 above, by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed, and
  - in any other case, by the person who had such custody or control.
- (3) In this paragraph “the appropriate judicial authority” means—
- in England and Wales, a magistrates’ court;
  - in Scotland, the sheriff;
  - in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the <sup>M34</sup>Magistrates’ Court (Northern Ireland) Order 1981.
- (4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the <sup>M35</sup>Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

#### Marginal Citations

**M34** [S.I. 1981/1675 \(N.I.26\)](#).

**M35** [1954 c. 33 \(N.I.\)](#).

### PART III

#### RECOVERY

##### *Recovery of tax etc.*

- 7 (1) Tax due from any person shall be recoverable as a debt due to the Crown.

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- (2) In the <sup>M36</sup>Insolvency Act 1986, in section 386(1) (preferential debts) the words “insurance premium tax,” shall be inserted after “VAT,” and in Schedule 6 (categories of preferential debts) the following paragraph shall be inserted after paragraph 3—

“3A Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any insurance premium tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.”

- (3) In the <sup>M37</sup>Bankruptcy (Scotland) Act 1985, Schedule 3 (preferred debts) shall be amended as mentioned in sub-paragraphs (4) and (5) below.

- (4) In paragraph 2 the following sub-paragraph shall be inserted after sub-paragraph (1)

“(1A) Any insurance premium tax which is referable to the period of six months next before the relevant date.”

- (5) The following shall be inserted after paragraph 8—

#### **Periods to which insurance premium tax referable**

“8A (1) For the purpose of paragraph 2(1A) of Part I of this Schedule—

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the period of six months next before the relevant date (“the relevant period”), the whole amount of that tax shall be referable to the relevant period; and
- (b) in any other case the amount of any insurance premium tax which shall be referable to the relevant period shall be the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

(2) In sub-paragraph (1) above “accounting period” shall be construed in accordance with Part III of the Finance Act 1994.”

- (6) In the <sup>M38</sup>Insolvency (Northern Ireland) Order 1989, in Article 346(1) (preferential debts) the words “insurance premium tax ” shall be inserted after “VAT” and in Schedule 4 (categories of preferential debts) the following paragraph shall be inserted after paragraph 3—

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“3A Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any insurance premium tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.”

(7) Regulations may make provision in respect of England and Wales and Northern Ireland—

- (a) for authorising distress to be levied on the goods and chattels of any person refusing or neglecting to pay any tax due from him or any amount recoverable as if it were tax due from him;
- (b) for the disposal of any goods or chattels on which distress is levied in pursuance of the regulations;
- (c) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under the regulations.

[<sup>F46</sup>(8) In respect of Scotland, where any tax or any amount recoverable as if it were tax is due and has not been paid, the sheriff, on an application by the Commissioners accompanied by a certificate by the Commissioners—

- (a) stating that none of the persons specified in the application has paid the tax or other sum due from him,
- (b) stating that payment of the amount due from each such person has been demanded from him, and
- (c) specifying the amount due from and unpaid by each such person,

shall grant a summary warrant in a form prescribed by act of sederunt authorising the recovery, by any of the diligences mentioned in sub-paragraph (9) below, of the amount remaining due and unpaid.

(9) The diligences referred to in sub-paragraph (8) above are—

- (a) a poinding and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987;
- (b) an earnings arrestment;
- (c) an arrestment and action of furthcoming or sale.

(10) Subject to sub-paragraph (11) below and without prejudice to paragraphs 25 to 34 of Schedule 5 to the <sup>M39</sup>Debtors (Scotland) Act 1987 (expenses of poinding and sale) the sheriff officer’s fees, together with the outlays necessarily incurred by him, in connection with the execution of a summary warrant shall be chargeable against the debtor.

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- (11) No fee shall be chargeable by the sheriff officer against the debtor for collecting, and accounting to the Commissioners for, sums paid to him by the debtor in respect of the amount owing.
- (12) Regulations may make provision for anything which the Commissioners may do under sub-paragraphs (8) to (11) above to be done by an officer of the Commissioners holding such rank as the regulations may specify.]

#### Textual Amendments

**F46** Sch. 7 para. 7(8)-(12) substituted for para. 7(8) (1.5.1995) by 1995 c. 4, s. 34, Sch. 5 para. 9

#### Marginal Citations

**M36** 1986 c. 45.

**M37** 1985 c. 66.

**M38** S.I. 1989/2405 (N.I. 19).

**M39** 1987 c. 18.

### *Recovery of overpaid tax*

- 8 (1) Where a person has paid an amount to the Commissioners by way of tax which was not tax due to them, they shall be liable to repay the amount to him.
- (2) The Commissioners shall only be liable to repay an amount under this paragraph on a claim being made for the purpose.
- (3) It shall be a defence, in relation to a claim under this paragraph, that repayment of an amount would unjustly enrich the claimant.
- (4) No amount may be claimed under this paragraph after the expiry of six years from the date on which it was paid, except where sub-paragraph (5) below applies.
- (5) Where an amount has been paid to the Commissioners by reason of a mistake, a claim for the repayment of the amount under this paragraph may be made at any time before the expiry of six years from the date on which the claimant discovered the mistake or could with reasonable diligence have discovered it.
- (6) A claim under this paragraph shall be made in such form and manner and shall be supported by such documentary evidence as may be prescribed by regulations.
- (7) Except as provided by this paragraph, the Commissioners shall not be liable to repay an amount paid to them by way of tax by virtue of the fact that it was not tax due to them.

## PART IV

### PENALTIES

#### *Criminal offences*

- 9 (1) A person is guilty of an offence if—

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- (a) being a registrable person, he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by him or another registrable person, or
  - (b) not being a registrable person, he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by a registrable person.
- (2) Any reference in sub-paragraph (1) above to the evasion of tax includes a reference to the obtaining of a payment under regulations under section 55(3)(c) or (d) or (f) of this Act.
- (3) A person is guilty of an offence if with the requisite intent—
- (a) he produces, furnishes or sends, or causes to be produced, furnished or sent, for the purposes of this Part of this Act any document which is false in a material particular, or
  - (b) he otherwise makes use for those purposes of such a document;
- and the requisite intent is intent to deceive or to secure that a machine will respond to the document as if it were a true document.
- (4) A person is guilty of an offence if in furnishing any information for the purposes of this Part of this Act he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular.
- (5) A person is guilty of an offence by virtue of this sub-paragraph if his conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions of this paragraph; and the preceding provisions of this sub-paragraph apply whether or not the particulars of that offence or those offences are known.
- (6) A person is guilty of an offence if—
- (a) he enters into a taxable insurance contract, or
  - (b) he makes arrangements for other persons to enter into a taxable insurance contract,
- with reason to believe that tax in respect of the contract will be evaded.
- (7) A person is guilty of an offence if he enters into taxable insurance contracts without giving security (or further security) he has been required to give under paragraph 24 below.

#### *Criminal penalties*

- 10 (1) A person guilty of an offence under paragraph 9(1) above shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum or of three times the amount of the tax, whichever is the greater, or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both.
- (2) The reference in sub-paragraph (1) above to the amount of the tax shall be construed, in relation to tax itself or a payment falling within paragraph 9(2) above, as a reference to the aggregate of—
- (a) the amount (if any) falsely claimed by way of credit, and
  - (b) the amount (if any) by which the gross amount of tax was falsely understated.

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- (3) A person guilty of an offence under paragraph 9(3) or (4) above shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum or, where sub-paragraph (4) below applies, to the alternative penalty there specified if it is greater, or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both.
- (4) In a case where—
- (a) the document referred to in paragraph 9(3) above is a return required under this Part of this Act, or
  - (b) the information referred to in paragraph 9(4) above is contained in or otherwise relevant to such a return,
- the alternative penalty is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit and the amount (if any) by which the gross amount of tax was understated.
- (5) A person guilty of an offence under paragraph 9(5) above shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum or (if greater) three times the amount of any tax that was or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both;
- and paragraph 9(2) and sub-paragraph (2) above shall apply for the purposes of this sub-paragraph as they apply respectively for the purposes of paragraph 9(1) and sub-paragraph (1) above.
- (6) A person guilty of an offence under paragraph 9(6) above shall be liable on summary conviction to a penalty of level 5 on the standard scale or three times the amount of the tax, whichever is the greater.
- (7) A person guilty of an offence under paragraph 9(7) above shall be liable on summary conviction to a penalty of level 5 on the standard scale.
- (8) In this paragraph—
- (a) “credit” means credit for which provision is made by regulations under section 55 of this Act;
  - (b) “the gross amount of tax” means the total amount of tax due before taking into account any deduction for which provision is made by regulations under section 55(3) of this Act.

*Criminal proceedings etc.*

- 11 Sections 145 to 155 of the <sup>M40</sup>Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences under paragraph 9 above and penalties imposed under paragraph 10 above as they apply in relation to offences and penalties under the customs and excise Acts as defined in that Act.

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#### Marginal Citations

M40 1979 c. 2.

#### *Civil penalties*

- 12 (1) In a case where—
- (a) for the purpose of evading tax, a registrable person does any act or omits to take any action, and
  - (b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
- he shall be liable to a penalty equal to the amount of tax evaded, or (as the case may be) sought to be evaded, by his conduct; but this is subject to sub-paragraph (7) below.
- (2) The reference in sub-paragraph (1)(a) above to evading tax includes a reference to obtaining a payment under regulations under section 55(3)(c) or (d) or (f) of this Act in circumstances where the person concerned is not entitled to the sum.
- (3) The reference in sub-paragraph (1) above to the amount of tax evaded or sought to be evaded is a reference to the aggregate of—
- (a) the amount (if any) falsely claimed by way of credit, and
  - (b) the amount (if any) by which the gross amount of tax was falsely understated.
- (4) In this paragraph—
- (a) “credit” means credit for which provision is made by regulations under section 55 of this Act;
  - (b) “the gross amount of tax” means the total amount of tax due before taking into account any deduction for which provision is made by regulations under section 55(3) of this Act.
- (5) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in sub-paragraph (6) below by reason only that it has been drawn to his attention—
- (a) that, in relation to tax, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no undertaking can be given as to whether the Commissioners will make such an assessment in the case of any person, it is their practice to be influenced by the fact that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for investigation, and
  - (b) that the Commissioners or, on appeal, an appeal tribunal have power under paragraph 13 below to reduce a penalty under this paragraph,
- and that he was or may have been induced thereby to make the statements or produce the documents.
- (6) The proceedings referred to in sub-paragraph (5) above are—
- (a) any criminal proceedings against the person concerned in respect of any offence in connection with or in relation to tax, and
  - (b) any proceedings against him for the recovery of any sum due from him in connection with or in relation to tax.

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- (7) Where, by reason of conduct falling within sub-paragraph (1) above, a person is convicted of an offence (whether under this Part of this Act or otherwise) that conduct shall not also give rise to liability to a penalty under this paragraph.
- 13 (1) Where a person is liable to a penalty under paragraph 12 above the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) In the case of a penalty reduced by the Commissioners under sub-paragraph (1) above an appeal tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.
- (3) None of the matters specified in sub-paragraph (4) below shall be matters which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under this paragraph.
- (4) Those matters are—
- (a) the insufficiency of the funds available to any person for paying any tax due or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of tax.
- 14 (1) A person who fails to comply with section 53(2) of this Act shall be liable to a penalty equal to 5 per cent. of the relevant tax or, if it is greater or the circumstances are such that there is no relevant tax, to a penalty of £250; but this is subject to sub-paragraphs (3) and (4) below.
- (2) In sub-paragraph (1) above “relevant tax” means the tax (if any) for which the person concerned is liable for the period which—
- (a) begins on the date with effect from which he is, in accordance with section 53 of this Act, required to be registered, and
  - (b) ends on the date on which the Commissioners received notification of his liability to be registered.
- (3) Conduct falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his conduct.
- (4) Where, by reason of conduct falling within sub-paragraph (1) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 12 above,
- that conduct shall not also give rise to liability to a penalty under this paragraph.
- (5) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this sub-paragraph was exercised, they may by order substitute for the sum for the time being specified in sub-paragraph (1) above such other sum as appears to them to be justified by the change.
- (6) An order under sub-paragraph (5) above shall not apply in relation to a failure which ended on or before the date on which the order comes into force.
- 15 (1) This paragraph applies if a person fails to comply with—

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- (a) a requirement imposed by regulations made under section 54 of this Act to pay the tax due in respect of any period within the time required by the regulations, or
- (b) a requirement imposed by regulations made under that section to furnish a return in respect of any period within the time required by the regulations;
- and sub-paragraphs (2) and (3) below shall have effect subject to sub-paragraphs (5) and (6) below and paragraph 25(7) below.
- (2) The person shall be liable to a penalty equal to 5 per cent. of the tax due or, if it is greater, to a penalty of £250.
- (3) The person—
- (a) shall be liable, in addition to an initial penalty under sub-paragraph (2) above, to a penalty of £20 for every relevant day when he fails to pay the tax or furnish the return, but
- (b) shall not in respect of the continuation of the failure be liable to further penalties under sub-paragraph (2) above;
- and a relevant day is any day falling after the time within which the tax is required to be paid or the return is required to be furnished.
- (4) For the purposes of sub-paragraph (2) above the tax due—
- (a) shall, if the person concerned has furnished a return, be taken to be the tax shown in the return as that for which he is accountable in respect of the period in question, and
- (b) shall, in any other case, be taken to be such tax as has been assessed for that period and notified to him under section 56(1) of this Act.
- (5) A failure falling within sub-paragraph (1) or (3) above shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.
- (6) Where, by reason of a failure falling within sub-paragraph (1) or (3) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
- (b) a person is assessed to a penalty under paragraph 12 above,
- that failure shall not also give rise to liability to a penalty under this paragraph.
- (7) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this sub-paragraph was exercised, they may by order substitute for the sums for the time being specified in sub-paragraphs (2) and (3) above such other sums as appear to them to be justified by the change.
- (8) An order under sub-paragraph (7) above shall not apply in relation to a failure which began before the date on which the order comes into force.
- 16 (1) This paragraph applies where—
- (a) by virtue of regulations made under section 65 of this Act a liability notice (within the meaning of that section) is served on an insured person,
- (b) by virtue of such regulations that person is liable to pay an amount of tax which has been assessed in accordance with the regulations, and
- (c) that tax is not paid within the time required by the regulations;

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and sub-paragraphs (2) and (3) below shall have effect subject to sub-paragraphs (4) and (5) below and paragraph 25(7) below.

- (2) The person shall be liable to a penalty equal to 5 per cent. of the tax assessed as mentioned in sub-paragraph (1) above or, if it is greater, to a penalty of £250.
  - (3) The person—
    - (a) shall be liable, in addition to an initial penalty under sub-paragraph (2) above, to a penalty of £20 for every relevant day when the tax is unpaid, but
    - (b) shall not in respect of the continuation of the non-payment of the tax be liable to further penalties under sub-paragraph (2) above;and a relevant day is any day falling after the time within which the tax is required to be paid.
  - (4) A person shall not be liable to a penalty by virtue of this paragraph if he satisfies the Commissioners or, on appeal, an appeal tribunal that he took all reasonable steps to ensure that the tax mentioned in sub-paragraph (1)(b) above was paid within the time required by the regulations.
  - (5) Where, by reason of a failure to pay tax, a person is convicted of an offence (whether under this Part of this Act or otherwise), that failure shall not also give rise to liability to a penalty under this paragraph.
  - (6) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this sub-paragraph was exercised, they may by order substitute for the sums for the time being specified in sub-paragraphs (2) and (3) above such other sums as appear to them to be justified by the change.
  - (7) An order under sub-paragraph (6) above shall not apply in relation to any failure to pay tax that was required to be paid before the date on which the order comes into force.
- 17 (1) If a person fails to comply with—
  - (a) section 53(3) of this Act,
  - (b) any provision of paragraph 2 or 3 above, or
  - (c) a requirement imposed by any regulations made under this Part of this Act, other than a requirement falling within sub-paragraph (2) below,he shall be liable to a penalty of £250; but this is subject to sub-paragraphs (3) and (4) below.
- (2) A requirement falls within this sub-paragraph if it is—
    - (a) a requirement imposed by regulations made under section 54 of this Act to pay the tax due in respect of any period within the time required by the regulations,
    - (b) a requirement imposed by regulations made under that section to furnish a return in respect of any period within the time required by the regulations,
    - (c) a requirement imposed by regulations made under section 65 of this Act to pay tax within the time required by the regulations, or
    - (d) a requirement specified for the purposes of this sub-paragraph by regulations.

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- (3) A failure falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.
- (4) Where by reason of a failure falling within sub-paragraph (1) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 12 above,
- that failure shall not also give rise to liability to a penalty under this paragraph.
- (5) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this sub-paragraph was exercised, they may by order substitute for the sum for the time being specified in sub-paragraph (1) above such other sum as appears to them to be justified by the change.
- (6) An order under sub-paragraph (5) above shall not apply in relation to a failure which began before the date on which the order comes into force.
- 18 (1) A person who—
- (a) by virtue of subsection (3), (7) or (9) of section 57 of this Act becomes subject to a duty to take action as mentioned in subsection (4) of that section, and
  - (b) fails to take action as so mentioned,
- shall be liable to a penalty of £10,000; but this is subject to sub-paragraph (2) below.
- (2) A failure falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.
- (3) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this sub-paragraph was exercised, they may by order substitute for the sum for the time being specified in sub-paragraph (1) above such other sum as appears to them to be justified by the change.
- (4) An order under sub-paragraph (3) above shall not apply in relation to a case where the duty mentioned in sub-paragraph (1) above was imposed before the date on which the order comes into force.
- 19 (1) This paragraph applies where—
- (a) in accordance with regulations under paragraph 7(7) above a distress is authorised to be levied on the goods and chattels of a person (a person in default) who has refused or neglected to pay any tax due from him or any amount recoverable as if it were tax due from him, and
  - (b) the person levying the distress and the person in default have entered into a walking possession agreement.
- (2) For the purposes of this paragraph a walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—

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- (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession, and
  - (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.
- (3) Subject to sub-paragraph (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to half of the tax or other amount referred to in sub-paragraph (1)(a) above.
- (4) The person in default shall not be liable to a penalty under sub-paragraph (3) above if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.
- (5) This paragraph does not extend to Scotland.
- 20 For the purposes of paragraphs 14(3), 15(5), 17(3), 18(2) and 19(4) above—
- (a) an insufficiency of funds available for paying any amount is not a reasonable excuse, and
  - (b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any conduct of the person relied upon is a reasonable excuse.

## PART V

### INTEREST

*Interest on tax etc.*

- 21 (1) Where an assessment is made under any provision of section 56 of this Act, the whole of the amount assessed shall carry interest at the prescribed rate from the reckonable date until payment; but this is subject to sub-paragraph (2) and paragraph 25(7) below.
- (2) Sub-paragraph (1) above shall not apply in relation to an assessment under section 56(1) of this Act unless at least one of the following conditions is fulfilled, namely—
- (a) that the assessment relates to an accounting period in respect of which either a return has previously been made, or an earlier assessment has already been notified to the person concerned;
  - (b) that the assessment relates to an accounting period which exceeds three months and begins on the date with effect from which the person was, or was required to be, registered under this Part of this Act.
- (3) In a case where—
- (a) the circumstances are such that a relevant assessment could have been made, but
  - (b) before such an assessment was made the tax due or other amount concerned was paid (so that no such assessment was necessary),

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the whole of the amount paid shall carry interest at the prescribed rate from the reckonable date until the date on which it was paid; and for the purposes of this sub-paragraph a relevant assessment is an assessment in relation to which sub-paragraph (1) above would have applied if the assessment had been made.

(4) The references in sub-paragraphs (1) and (3) above to the reckonable date shall be construed as follows—

- (a) where the amount assessed or paid is such an amount as is referred to in subsection (2) of section 56 of this Act, the reckonable date is the seventh day after the day on which a written instruction was issued by the Commissioners directing the making of the payment of the amount which ought not to have been paid to the person concerned;
- (b) in all other cases the reckonable date is the latest date on which (in accordance with regulations under this Part of this Act) a return is required to be made for the accounting period to which the amount assessed or paid relates;

and interest under this paragraph shall run from the reckonable date even if that date is a non-business day, within the meaning of section 92 of the <sup>M41</sup>Bills of Exchange Act 1882.

(5) In this paragraph “the prescribed rate” means such rate as may be prescribed by order; and such an order—

- (a) may prescribe different rates for different purposes;
- (b) shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date.

(6) Interest under this paragraph shall be paid without any deduction of income tax.

#### Marginal Citations

M41 1882 c. 61.

#### *Interest payable by Commissioners*

- 22 (1) Where, due to an error on the part of the Commissioners, a person—
- (a) has paid to them by way of tax an amount which was not tax due and which they are in consequence liable to repay to him,
  - (b) has failed to claim payment of an amount to the payment of which he was entitled in pursuance of provision made under section 55(3)(c), (d) or (f) of this Act, or
  - (c) has suffered delay in receiving payment of an amount due to him from them in connection with tax,

then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.

[<sup>F47</sup>(1A) In sub-paragraph (1) above—

- (a) the reference in paragraph (a) to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due

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- is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied; and
- (b) the amounts referred to in paragraph (c) do not include any amount payable under this paragraph.]
- (2) Interest under this paragraph shall be payable at such rate as may from time to time be prescribed by order, and—
- (a) any such order may prescribe different rates for different purposes;
- (b) any such order shall apply to interest for periods beginning on or after the date on which the order is expressed to come into force, whether or not interest runs from before that date.
- (3) The applicable period, in a case falling within sub-paragraph (1)(a) above, is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
- (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (4) The applicable period, in a case falling within sub-paragraph (1)(b) or (c) above, is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and
- (b) ending with the date on which they in fact authorise payment of that amount.
- (5) In determining the applicable period for the purposes of this paragraph, there shall be left out of account any period referable to the raising and answering of any reasonable enquiry relating to any matter giving rise to, or otherwise connected with, the person's entitlement to interest under this paragraph.
- (6) In determining for the purposes of sub-paragraph (5) above whether any period is referable to the raising and answering of such an enquiry as is there mentioned, there shall be taken to be so referable any period which begins with the date on which the Commissioners first consider it necessary to make such an enquiry and ends with the date on which the Commissioners—
- (a) satisfy themselves that they have received a complete answer to the enquiry, or
- (b) determine not to make the enquiry or (if they have made it) not to pursue it further;
- but excluding so much of that period as may be prescribed by regulations.
- (7) For the purposes of sub-paragraph (6) above it is immaterial—
- (a) whether any enquiry is in fact made;
- (b) whether any enquiry is or might have been made of the person referred to in sub-paragraph (1) above or of an authorised person or of some other person.
- (8) The Commissioners shall only be liable to pay interest under this paragraph on a claim made in writing for that purpose.
- [<sup>F48</sup>(9) A claim under this paragraph shall not be made more than three years after the end of the applicable period to which it relates.]

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[<sup>F49</sup>(10) References in this paragraph to the authorisation by the Commissioners of the payment of any amount include references to the discharge by way of set-off of the Commissioners' liability to pay that amount.]

#### Textual Amendments

- F47** Sch. 7 para. 22(1A) inserted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 9(1)(2)**  
**F48** Sch. 7 para. 22(9) substituted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 9(1)(3)**  
**F49** Sch. 7 para. 22(10) substituted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 9(1)(4)**

- 22 (1) Where, due to an error on the part of the Commissioners, a person—
- (a) has paid to them by way of tax an amount which was not tax due and which they are in consequence liable to repay to him,
  - (b) has failed to claim payment of an amount to the payment of which he was entitled in pursuance of provision made under section 55(3)(c), (d) or (f) of this Act, or
  - (c) has suffered delay in receiving payment of an amount due to him from them in connection with tax,
- then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.
- (2) Interest under this paragraph shall be payable at such rate as may from time to time be prescribed by order, and—
- (a) any such order may prescribe different rates for different purposes;
  - (b) any such order shall apply to interest for periods beginning on or after the date on which the order is expressed to come into force, whether or not interest runs from before that date.
- (3) The applicable period, in a case falling within sub-paragraph (1)(a) above, is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (4) The applicable period, in a case falling within sub-paragraph (1)(b) or (c) above, is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and
  - (b) ending with the date on which they in fact authorise payment of that amount.
- (5) In determining the applicable period for the purposes of this paragraph, there shall be left out of account any period referable to the raising and answering of any reasonable enquiry relating to any matter giving rise to, or otherwise connected with, the person's entitlement to interest under this paragraph.
- (6) In determining for the purposes of sub-paragraph (5) above whether any period is referable to the raising and answering of such an enquiry as is there mentioned, there

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shall be taken to be so referable any period which begins with the date on which the Commissioners first consider it necessary to make such an enquiry and ends with the date on which the Commissioners—

- (a) satisfy themselves that they have received a complete answer to the enquiry, or
- (b) determine not to make the enquiry or (if they have made it) not to pursue it further;

but excluding so much of that period as may be prescribed by regulations.

- (7) For the purposes of sub-paragraph (6) above it is immaterial—
  - (a) whether any enquiry is in fact made;
  - (b) whether any enquiry is or might have been made of the person referred to in sub-paragraph (1) above or of an authorised person or of some other person.
- (8) The Commissioners shall only be liable to pay interest under this paragraph on a claim made in writing for that purpose.
- (9) No claim shall be made under this paragraph after the expiry of six years from the date on which the claimant discovered the error or could with reasonable diligence have discovered it.
- (10) Any reference in this paragraph to receiving a payment from the Commissioners includes a reference to the discharge, by way of set-off, of their liability to make it.

- 23 (1) In a case where—
- (a) any interest is payable by the Commissioners to a person on a sum due to him under this Part of this Act, and
  - (b) he is a person to whom regulations under section 55 of this Act apply,
- the interest shall be treated as an amount to which he is entitled by way of credit in pursuance of the regulations.
- (2) Sub-paragraph (1) above shall be disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled.

## PART VI

### MISCELLANEOUS

#### *Security for tax*

- 24 Where it appears to the Commissioners requisite to do so for the protection of the revenue they may require a registrable person, as a condition of his entering into taxable insurance contracts, to give security (or further security) of such amount and in such manner as they may determine for the payment of any tax which is or may become due from him.

#### *Assessments to penalties etc.*

- 25 (1) Where a person is liable—
- (a) to a penalty under any of paragraphs 12 to 19 above, or
  - (b) for interest under paragraph 21 above,

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the Commissioners may, subject to sub-paragraph (2) below, assess the amount due by way of penalty or interest (as the case may be) and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under any of paragraphs 12 to 19 above may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.

- (2) In the case of the penalties and interest referred to in the following paragraphs of this sub-paragraph, the assessment under this paragraph shall be of an amount due in respect of the accounting period which in the paragraph concerned is referred to as the relevant period—
- (a) in the case of a penalty under paragraph 12 above relating to the evasion of tax, the relevant period is the accounting period for which the tax evaded was due;
  - (b) in the case of a penalty under paragraph 12 above relating to the obtaining of a payment under regulations under section 55(3)(c) or (d) or (f) of this Act, the relevant period is the accounting period in respect of which the payment was obtained;
  - (c) in the case of interest under paragraph 21 above, the relevant period is the accounting period in respect of which the tax (or amount assessed as tax) was due.
- (3) In a case where the amount of any penalty or interest falls to be calculated by reference to tax which was not paid at the time it should have been and that tax cannot be readily attributed to any one or more accounting periods, it shall be treated for the purposes of this Part of this Act as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty or interest.
- (4) Where a person is assessed under this paragraph to an amount due by way of any penalty or interest falling within sub-paragraph (2) above and is also assessed under subsection (1) or (2) of section 56 of this Act for the accounting period which is the relevant period under sub-paragraph (2) above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty or interest shall be separately identified in the notice.
- (5) Sub-paragraph (6) below applies in the case of—
- (a) an amount due by way of penalty under paragraph 15 or 16 above;
  - (b) an amount due by way of interest under paragraph 21 above.
- (6) Where this sub-paragraph applies in the case of an amount—
- (a) a notice of assessment under this paragraph shall specify a date, being not later than the date of the notice, to which the aggregate amount of the penalty or, as the case may be, the amount of interest which is assessed is calculated, and
  - (b) if the penalty or interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of amounts which so accrue.
- (7) If, within such period as may be notified by the Commissioners to the person liable to the penalty under paragraph 15 or 16 above or for the interest under paragraph 21 above—
- (a) a failure falling within paragraph 15(3) above is remedied,
  - (b) the tax referred to in paragraph 16(1) above is paid, or

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- (c) the amount referred to in paragraph 21(1) above is paid,  
it shall be treated for the purposes of paragraph 15, 16 or 21 above (as the case may be) as remedied or paid on the date specified as mentioned in sub-paragraph (6)(a) above.
- (8) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were tax due from him unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (9) Subsection (8) of section 56 of this Act shall apply for the purposes of this paragraph as it applies for the purposes of that section.

*Assessments: time limits*

- 26 (1) Subject to the following provisions of this paragraph, an assessment under—
- (a) any provision of section 56 of this Act, or
  - (b) paragraph 25 above,
- shall not be made more than six years after the end of the accounting period concerned or, in the case of an assessment under paragraph 25 above of an amount due by way of a penalty which is not a penalty referred to in sub-paragraph (2) of that paragraph, six years after the event giving rise to the penalty.
- (2) An assessment under paragraph 25 above of—
- (a) an amount due by way of any penalty referred to in sub-paragraph (2) of that paragraph, or
  - (b) an amount due by way of interest,
- may be made at any time before the expiry of the period of two years beginning with the time when the amount of tax due for the accounting period concerned has been finally determined.
- (3) In relation to an assessment under paragraph 25 above, any reference in sub-paragraph (1) or (2) above to the accounting period concerned is a reference to that period which, in the case of the penalty or interest concerned, is the relevant period referred to in sub-paragraph (2) of that paragraph.
- (4) If tax has been lost—
- (a) as a result of conduct falling within paragraph 12(1) above or for which a person has been convicted of fraud, or
  - (b) in circumstances giving rise to liability to a penalty under paragraph 14 above,
- an assessment may be made as if, in sub-paragraph (1) above, each reference to six years were a reference to twenty years.

*Supplementary assessments*

- 27 If, otherwise than in circumstances falling within subsection (5)(b) of section 56 of this Act, it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any provision of that section or under paragraph 25 above exceeds the amount which was so assessed, then—
- (a) under the like provision as that assessment was made, and

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(b) on or before the last day on which that assessment could have been made, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

*Disclosure of information*

- 28 (1) Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners may disclose information—
- (a) to the Secretary of State, or
  - (b) to an authorised officer of the Secretary of State,
- for the purpose of assisting the Secretary of State in the performance of his duties.
- (2) Notwithstanding any such obligation as is mentioned in sub-paragraph (1) above—
- (a) the Secretary of State, or
  - (b) an authorised officer of the Secretary of State,
- may disclose information to the Commissioners or to an authorised officer of the Commissioners for the purpose of assisting the Commissioners in the performance of duties in relation to tax.
- (3) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—
- (a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made, or
  - (b) for the purpose of any proceedings connected with the operation of any provision of, or made under, any enactment in relation to insurance or to tax.
- (4) References in the preceding provisions of this paragraph to an authorised officer of the Secretary of State are to any person who has been designated by the Secretary of State as a person to and by whom information may be disclosed under this paragraph.
- (5) The Secretary of State shall notify the Commissioners in writing of the name of any person designated under sub-paragraph (4) above.

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

- C4 Sch. 7 para. 28: certain functions of the Secretary of State made exercisable concurrently with the Treasury (5.1.1998) by S.I. 1997/2781, arts. 4(3) (with art. 7)

VALID FROM 05/01/1998

- <sup>F50</sup>28A(1) Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners may disclose information—
- (a) to the Treasury, or
  - (b) to an authorised officer of the Treasury,
- for the purpose of assisting the Treasury in the performance of their duties.
- (2) Notwithstanding any such obligation as is mentioned in sub-paragraph (1) above—
- (a) the Treasury, or
  - (b) an authorised officer of the Treasury,

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may disclose information to the Commissioners or to an authorised officer of the Commissioners for the purpose of assisting the Commissioners in the performance of duties in relation to tax.

- (3) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—
- (a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made, or
  - (b) for the purpose of any proceedings connected with the operation of any provision of, or made under, any enactment in relation to insurance or to tax.
- (4) References in the preceding provisions of this paragraph to an authorised officer of the Treasury are to any person who has been designated by the Treasury as a person to and by whom information may be disclosed under this paragraph.
- (5) The Treasury shall notify the Commissioners in writing of the name of any person designated under sub-paragraph (4) above.]

#### Textual Amendments

**F50** Sch. 7 para. 28A inserted (5.1.1998) by S.I. 1997/2781, art. 8(1), Sch. Pt. II para. 124 (with art. 7)

#### *Evidence by certificate*

- 29 (1) A certificate of the Commissioners—
- (a) that a person was or was not at any time registered under section 53 of this Act,
  - (b) that any return required by regulations under section 54 of this Act has not been made or had not been made at any time, or
  - (c) that any tax shown as due in a return made in pursuance of regulations made under section 54 of this Act, or in an assessment made under section 56 of this Act, has not been paid,
- shall be sufficient evidence of that fact until the contrary is proved.
- (2) Any document purporting to be a certificate under sub-paragraph (1) above shall be taken to be such a certificate until the contrary is proved.

#### *Service of notices etc.*

- 30 Any notice, notification or requirement to be served on, given to or made of any person for the purposes of this Part of this Act may be served, given or made by sending it by post in a letter addressed to that person or his tax representative at the last or usual residence or place of business of that person or representative.

#### *No deduction of penalties or interest*

- 31 In section 827 of the Taxes Act 1988 (no deduction for penalties etc.) the following subsection shall be inserted after subsection (1A)—
- “(1B) Where a person is liable to make a payment by way of—

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- (a) penalty under any of paragraphs 12 to 19 of Schedule 7 to the Finance Act 1994 (insurance premium tax), or
  - (b) interest under paragraph 21 of that Schedule,
- the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”

*Destination of receipts*

- 32 All money and securities for money collected or received for or on account of the tax shall—
- (a) if collected or received in Great Britain, be placed to the general account of the Commissioners kept at the Bank of England under section 17 of the <sup>M42</sup>Customs and Excise Management Act 1979;
  - (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.

**Marginal Citations**

**M42** 1979 c. 2.

*Provisional collection of tax*

- 33 In section 1(1) of the <sup>M43</sup>Provisional Collection of Taxes Act 1968 after “value added tax,” there shall be inserted “ insurance premium tax, ”.

**Marginal Citations**

**M43** 1968 c. 2.

- 34 (1) In a case where—
- (a) by virtue of a resolution having effect under the Provisional Collection of Taxes Act 1968 tax has been paid at a rate specified in the resolution, and
  - (b) by virtue of section 1(6) or (7) or 5(3) of that Act any of that tax is repayable in consequence of the restoration in relation to the premium concerned of a lower rate,
- the amount repayable shall be the difference between the tax paid by reference to the actual chargeable amount at the rate specified in the resolution and the tax that would have been payable by reference to the actual chargeable amount at the lower rate.
- (2) In sub-paragraph (1) above the “actual chargeable amount” means the chargeable amount by reference to which tax was paid.
- (3) In a case where—
- (a) by virtue of a resolution having effect under the <sup>M44</sup>Provisional Collection of Taxes Act 1968 tax is chargeable at a rate specified in the resolution, but
  - (b) before the tax is paid it ceases to be chargeable at that rate in consequence of the restoration in relation to the premium concerned of a lower rate,
- the tax chargeable at the lower rate shall be charged by reference to the same chargeable amount as that by reference to which tax would have been chargeable at the rate specified in the resolution.

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### Marginal Citations

M44 1968 c. 2.

### *Adjustment of contracts*

- 35 (1) Where, after the making of a contract of insurance and before a given premium is received by the insurer under the contract, there is a change in the tax chargeable on the receipt of the premium, then, unless the contract otherwise provided, there shall be added to or deducted from the amount payable as the premium an amount equal to the difference between—
- (a) the tax chargeable had the change not been made, and
  - (b) the tax in fact chargeable.
- (2) References in sub-paragraph (1) above to a change in the tax chargeable include references to a change to or from no tax being chargeable.
- (3) Where this paragraph applies, the amount of the premium shall not be treated as altered for the purposes of calculating tax.

## [<sup>F51</sup>SCHEDULE 7A

### INSURANCE PREMIUM TAX: CONTRACTS THAT ARE NOT TAXABLE

### Textual Amendments

F51 Sch. 7A inserted (1.10.1994) by S.I. 1994/1698, art. 5

## PART I

### DESCRIPTIONS OF CONTRACT

#### *Contracts of reinsurance*

- 1 A contract falls within this paragraph if it is a contract of reinsurance.

#### *Contracts constituting long term business]*

- 2 (1) A contract falls within this paragraph if it is one whose effecting and carrying out constitutes business of one or more of the classes specified in Schedule 1 to the Insurance Companies Act 1982 <sup>F52</sup> (long term business) and constitutes only such business.
- (2) In deciding whether the effecting and carrying out of a contract constitutes only such business as is mentioned in sub-paragraph (1) above where—

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- (a) the contract includes cover for risks not falling within the descriptions in any of the classes specified in Schedule 1 to the Insurance Companies Act 1982;
  - (b) the effecting and carrying out of the contract is treated for the purposes of that Act as constituting business of one or more of those classes and only such business by virtue of the application to it of section 1(3) of that Act; and
  - (c) the contract was not entered into after 30th November 1993,
- the inclusion of such cover shall be ignored.

#### Textual Amendments

F52 1982 c.50.

#### *Contracts relating to motor vehicles for use by handicapped persons*

- 3 (1) A contract falls within this paragraph if it relates only to a motor vehicle and the conditions mentioned in sub-paragraph (2) below are satisfied.
- (2) The conditions referred to in sub-paragraph (1) above are that—
- (a) the vehicle is used, or intended for use, by a handicapped person in receipt of a disability living allowance by virtue of entitlement to the mobility component or of a mobility supplement;
  - (b) the insured lets such vehicles on hire to such persons in the course of a business consisting predominantly of the provision of motor vehicles to such persons; and
  - (c) the insured does not in the course of the business let such vehicles on hire to such persons on terms other than qualifying terms.
- (3) For the purposes of sub-paragraph (2)(c) above a vehicle is let on qualifying terms to a person (the lessee) if the consideration for the letting consists wholly or partly of sums paid to the insured by—
- (a) the Department of Social Security;
  - (b) the Department of Health and Social Services for Northern Ireland; or
  - (c) the Ministry of Defence,
- on behalf of the lessee in respect of the disability living allowance or mobility supplement to which the lessee is entitled.
- (4) For the purposes of this paragraph—
- (a) “handicapped” means chronically sick or disabled;
  - (b) “disability living allowance” means a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992 <sup>M45</sup> or section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 <sup>M46</sup>;
  - (c) “mobility supplement” means a mobility supplement within the meaning of article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 <sup>M47</sup>, article 25A of the Personal Injuries (Civilians) Scheme 1983 <sup>M48</sup>, article 3 of the Motor Vehicles (Exemption

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from Vehicles Excise Duty) Order 1985<sup>M49</sup> or article 3 of the Motor Vehicles (Exemption from Vehicles Excise Duty) (Northern Ireland) Order 1985<sup>M50</sup>.

#### Marginal Citations

**M45** 1992 c.4.

**M46** 1992 c.7.

**M47** S.I. 1983/883; article 26A was inserted by S.I. 1983/1116, and has been amended by S.I. 1983/1521, 1986/592 and 1990/1308.

**M48** S.I. 1983/686; article 25A was inserted by S.I. 1983/1164, and has been amended by S.I. 1983/1540, 1986/628, 1990/1300 and 1992/702.

**M49** S.I. 1985/722.

**M50** S.I. 1985/723.

#### *Contracts relating to commercial ships*

- 4
- (1) A contract falls within this paragraph if it relates only to a commercial ship and is a contract whose effecting and carrying out constitutes business of one or more of the relevant classes and constitutes only such business.
  - (2) For the purposes of this paragraph the relevant classes are classes 1, 6 and 12 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (ships, accident, third-party etc.).
  - (3) For the purposes of this paragraph a commercial ship is a ship which is—
    - (a) of a gross tonnage of 15 tons or more; and
    - (b) not designed or adapted for use for recreation or pleasure.

#### *Contracts relating to lifeboats and lifeboat equipment*

- 5
- (1) A contract falls within this paragraph if it relates only to a lifeboat and is a contract whose effecting and carrying out constitutes business of one or more of the relevant classes and constitutes only such business.
  - (2) For the purposes of this paragraph the relevant classes are classes 1, 6 and 12 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (ships, accident, third-party etc.).
  - (3) For the purposes of this paragraph a lifeboat is a vessel used or to be used solely for rescue or assistance at sea.
- 6
- (1) A contract falls within this paragraph if it relates only to a lifeboat and lifeboat equipment and is such that, if it related only to a lifeboat, it would fall within paragraph 5 above.
  - (2) In deciding whether a contract relates to lifeboat equipment the nature of the risks concerned is immaterial, and they may (for example) be risks of dying or sustaining injury or of loss or damage.
  - (3) For the purposes of this paragraph—
    - (a) “lifeboat” has the meaning given by paragraph 5(3) above; and

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- (b) “lifeboat equipment” means anything used or to be used solely in connection with a lifeboat.

*Contracts relating to commercial aircraft*

- 7 (1) A contract falls within this paragraph if it relates only to a commercial aircraft and is a contract whose effecting and carrying out constitutes business of one or more of the relevant classes and constitutes only such business.
- (2) For the purposes of this paragraph the relevant classes are classes 1, 5 and 11 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (aircraft, accident, third-party etc.).
- (3) For the purposes of this paragraph a commercial aircraft is an aircraft which is—
- (a) of a weight of 8,000 kilogrammes or more; and
  - (b) not designed or adapted for use for recreation or pleasure.

*Contracts relating to risks outside the United Kingdom*

- 8 (1) A contract falls within this paragraph if it relates only to a risk which is situated outside the United Kingdom.
- (2) Section 96A(3) of the Insurance Companies Act 1982 <sup>F53</sup> shall apply to determine whether a risk is situated in the United Kingdom for the purposes of this paragraph as it applies to determine that question for the purposes of that Act, but as if for paragraph (a) of that section there were substituted the following—
- “(a) where the insurance relates to a building, its contents or both (whether or not the contents are covered by the same policy), to the member State in which the building is situated;”

**Textual Amendments**

**F53** 1982 c.50; section 96A was inserted by regulation 2(1) of S.I. 1990/1333.

*Contracts relating to foreign or international railway rolling stock*

- 9 (1) A contract falls within this paragraph if it relates only to foreign or international railway rolling stock and is a contract whose effecting and carrying out constitutes business of one or more of the relevant classes and constitutes only such business.
- (2) For the purposes of this paragraph the relevant classes are classes 4 and 13 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (railway rolling stock, third party etc.).
- (3) For the purposes of this paragraph foreign or international railway rolling stock is railway rolling stock used principally for journeys taking place wholly or partly outside the United Kingdom.

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*Contracts relating to the Channel tunnel*

- 10 (1) A contract falls within this paragraph if it relates only to the Channel tunnel system and is a contract whose effecting and carrying out constitutes business of one or more of the relevant classes and constitutes only such business.
- (2) For the purposes of this paragraph the relevant classes are classes 8, 9 and 13 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (fire, damage to property, third party etc.).
- (3) For the purposes of this paragraph “the Channel tunnel system” means—
- (a) the tunnels described in section 1(7)(a) of the Channel Tunnel Act 1987;
  - (b) the control towers situated in the terminal areas described in section 1(7)(b) of that Act; and
  - (c) the shuttle crossovers, wherever situated.
- 11 (1) A contract falls within this paragraph if it relates only to relevant Channel tunnel equipment and is a contract whose effecting and carrying out constitutes business of one or more of the relevant classes and constitutes only such business.
- (2) For the purposes of this paragraph the relevant classes are classes 8, 9 and 13 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (fire, damage to property, third party etc.).
- (3) For the purposes of this paragraph “the Channel tunnel system” has the meaning given by paragraph 10(3) above.
- (4) For the purposes of this paragraph “relevant Channel tunnel equipment” means, subject to sub-paragraph (5) below, the fixed or movable equipment needed for the operation of the Channel tunnel system or for the operation of trains through any tunnel forming part of it and in particular includes—
- (a) any ventilation, cooling or electrical plant used or to be used in connection with any such operation; and
  - (b) any safety, signalling and control equipment which is or is to be so used.
- (5) Equipment which consists of or forms part of—
- (a) roads, bridges, platforms, ticket offices and other facilities for the use of passengers or motor vehicles;
  - (b) administrative buildings and maintenance facilities; and
  - (c) railway track or signalling equipment which is not situated in any part of the Channel tunnel system,
- is not relevant Channel tunnel equipment for the purposes of this paragraph.

*Contracts relating to goods in foreign or international transit*

- 12 (1) A contract falls within this paragraph if it relates only to loss of or damage to goods in foreign or international transit and the insured enters into the contract in the course of a business carried on by him.
- (2) For the purposes of this paragraph goods in foreign or international transit are goods in transit, and any container in which they are carried, where their carriage—

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- (a) begins and ends outside the United Kingdom;
- (b) begins outside but ends in the United Kingdom; or
- (c) ends outside but begins in the United Kingdom.

(3) For the purposes of sub-paragraph (2) above “container” has the same meaning as in regulation 38(3) of the Value Added Tax (General) Regulations 1985<sup>M51</sup>.

**Marginal Citations**

**M51** S.I. 1985/886.

*Contracts relating to credit*

- 13 (1) A contract falls within this paragraph if it relates only to credit granted in relation to goods or services supplied under a relevant contract by a person carrying on business in the United Kingdom.
- (2) For the purposes of this paragraph a relevant contract is—
- (a) a contract to make a relevant supply of goods, or a supply of services, or both, to an overseas customer;
  - (b) a contract to supply goods to a person who is to—
    - (i) export those goods; or
    - (ii) incorporate those goods in other goods which he is to export, where the condition mentioned in sub-paragraph (3) below is satisfied;
  - (c) a contract to supply to a person who is to export goods services consisting of the valuation or testing of, or other work carried out on, those goods where the condition mentioned in sub-paragraph (3) below is satisfied;
  - (d) a contract to supply services to a person in order that he may comply with a legally binding obligation to make a supply of services to an overseas customer.
- (3) The condition referred to in sub-paragraph (2)(b) and (c) above is that the goods to be exported are to be exported in order that the person exporting them may comply with a legally binding obligation to make a relevant supply of goods to an overseas customer.
- (4) For the purposes of this paragraph—
- (a) “export” means export from the United Kingdom and cognate expressions shall be construed accordingly; and
  - (b) any reference to a person who is to export goods shall be taken as including a reference to a person at whose direction the insured is to export them and the reference in sub-paragraph (3) above to the person exporting goods shall be construed accordingly.
- (5) Where a contract relates to—
- (a) credit of the description in sub-paragraph (1) above; and
  - (b) loss resulting from the insured or any third party being required to pay the amount of any bond or guarantee against non-performance by the insured of the contract which involves him making the supply,
- the contract shall be treated for the purposes of sub-paragraph (1) above as if it did not relate to loss of the description in paragraph (b) above.

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*Contracts relating to exchange losses*

- 14 (1) A contract falls within this paragraph if—
- (a) it relates only to loss resulting from a change in the rate at which the price for a supply which is or may be made by the insured may be exchanged for another currency; and
  - (b) the conditions mentioned in sub-paragraph (2) below are satisfied.
- (2) The conditions referred to in sub-paragraph (1) above are that—
- (a) the insured is a person carrying on business in the United Kingdom;
  - (b) the contract of insurance concerns a contract to make a relevant supply of goods, or a supply of services, or both, to an overseas customer (whether or not the contract to make the supply is one into which the insured has entered, or one for which he has tendered or intends to tender); and
  - (c) the period of cover for the risk expires no later than the date by which the whole of the price for the supply is to be paid or, where the contract has not been entered into, would be required to be paid.
- (3) Where the contract relates to—
- (a) loss of the description in sub-paragraph (1)(a) above; and
  - (b) loss relating from a change in the rate at which the price of goods which the insured imports into the United Kingdom for the purpose of enabling him to make the supply concerned may be exchanged for another currency,
- the contract shall be treated for the purposes of sub-paragraphs (1) and (2) above as if it did not relate to loss of the description in paragraph (b) above.

*Contracts relating to the provision of financial facilities*

- 15 (1) A contract falls within this paragraph if it relates only to the provision of a relevant financial facility and the conditions mentioned in sub-paragraph (2) below are satisfied.
- (2) The conditions referred to in sub-paragraph (1) above are that—
- (a) the person to whom the relevant financial facility is provided is an overseas customer;
  - (b) it is provided in order that he may comply with a legally binding obligation to receive a relevant supply of goods, or a supply of services, or both, from a person carrying on business in the United Kingdom; and
  - (c) the contract of insurance is a contract whose effecting and carrying out constitutes business of one or both of classes 14 and 15 of the classes specified in Part I of Schedule 2 to the Insurance Companies Act 1982 (credit, suretyship etc.).
- (3) For the purposes of this paragraph a relevant financial facility is—
- (a) the making of an advance;
  - (b) the issue of a letter of credit or acceptance of a bill of exchange;
  - (c) the giving of a guarantee or bond; or
  - (d) any other similar transaction entered into in order to provide a customer with the means to pay, or a supplier with the right to call upon a third party for, the consideration for goods or services.

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## PART II

### INTERPRETATION

- 16 (1) This Part of this Schedule applies for the purposes of Part I of this Schedule.
- (2) A relevant supply of goods is any supply of goods where the supply is to be made outside the United Kingdom or where the goods are to be exported from the United Kingdom.
- (3) An overseas customer, in relation to a supply of goods or services, is a person who—
- (a) does not have any business establishment in the United Kingdom but has such an establishment elsewhere;
  - (b) has such establishments both in the United Kingdom and elsewhere, provided that the establishment at which, or for the purposes of which, the goods or services which are to be supplied to him are most directly to be used is not in the United Kingdom; or
  - (c) has no such establishment in any place and does not have his usual place of residence in the United Kingdom.

VALID FROM 01/12/2001

- [<sup>F54</sup>16A Paragraphs 2, 4, 5, 7, 8, 9, 10, 11 and 15 must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

#### Textual Amendments

**F54** Sch. 7A para. 16A inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 346(12)

## SCHEDULE 8

Section 77.

### SUPPLEMENTAL PROVISIONS RELATING TO PERSONAL RELIEFS

#### *The Taxes Act 1988*

- 1 In section 257A(6) of the Taxes Act 1988 (relief confined to one deduction), for “deduction” there shall be substituted “income tax reduction”.
- 2 (1) In subsections (1) and (2) of section 257BA of that Act (elections as to transfer of relief under section 257A)—
- (a) for the words “to deduct from her total income”, in each place where they occur, there shall be substituted “to an income tax reduction calculated by reference to”; and
  - (b) for the words “that he is entitled to deduct under section 257A”, in each place where they occur, there shall be substituted “by reference to which the calculation of the income tax reduction to which he is entitled under section 257A is to be made”.

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- (2) In subsection (3) of that section—
- (a) for “to deduct from his total income” there shall be substituted “ to an income tax reduction calculated by reference to ”;
  - (b) for “the amount, if any, that he is already entitled to deduct” there shall be substituted “ any income tax reduction to which he is already entitled ”; and
  - (c) for “that she is entitled to deduct by virtue of that election” there shall be substituted “ by reference to which the calculation of the income tax reduction to which she is entitled by virtue of that election is to be made ”.
- (3) Any election made for the purposes of section 257BA of the Taxes Act 1988 which—
- (a) has been made before the coming into force of this paragraph, and
  - (b) apart from this paragraph, would have effect in accordance with that section for the year 1994-95 or any subsequent year,
- shall so have effect as if it were an election for the purposes of that section as amended by this paragraph.
- 3 (1) In subsection (1) of section 257BB of that Act (transfer of relief where it is not all used), for paragraph (b) and the words after that paragraph there shall be substituted—
- “(b) the amount of the reduction to which he is entitled is determined in accordance with section 256(2)(b) or, by virtue of his having no income tax liability to which that reduction is applicable, is nil,
- his wife shall be entitled (in addition to any reduction to which she is entitled by virtue of an election under section 257BA) to an income tax reduction calculated by reference to an amount equal to the unused part of the amount by reference to which her husband’s income tax reduction fell to be calculated in pursuance of section 257A and any election under section 257BA. ”
- (2) In subsection (3) of that section, for paragraph (b) and the words after that paragraph there shall be substituted—
- “(b) the amount of the reduction to which she is entitled is determined in accordance with section 256(2)(b) or, by virtue of her having no income tax liability to which that reduction is applicable, is nil,
- her husband shall be entitled (in addition to any other reduction to which he is entitled by virtue of section 257A) to an income tax reduction calculated by reference to an amount equal to the unused part of the amount by reference to which his wife’s income tax reduction fell to be calculated in pursuance of that election. ”
- (3) After that subsection there shall be inserted the following subsection—
- “(3A) In this section references, in relation to such an amount as is mentioned in subsection (1)(b) or (3)(b), to the unused part of an amount by reference to which any income tax reduction fell to be calculated are references to so much of it (including, where the amount so mentioned is nil, all of it) as has no practical effect on the determination of the amount so mentioned.”
- (4) Subsection (6) of that section (calculation of amount left after deductions of a person’s total income) shall cease to have effect.

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- 4 (1) Where the year in question for the purposes of subsection (5) of section 257D of the Taxes Act 1988 (transitional relief in the case of a husband with excess allowances) is the year 1994-95, deductions by virtue of any of sections 257A to 262 of that Act shall be disregarded in determining the deductions which a wife is taken for the purposes of paragraph (c) of that subsection to have been entitled to make from her total income for the year immediately preceding the year in question.
- (2) In section 257D(5)(d) of that Act, the words “section 257A and” shall be omitted.
- 5 In section 257F(c) of that Act, after “257A” there shall be inserted “ or, as the case may be, an income tax reduction under that section ”.
- 6 (1) In subsection (1)(b) of section 259 of that Act (additional personal allowance not available to a person entitled to the married couple’s allowance), for “to a deduction from his total income” there shall be substituted “ to an income tax reduction ”.
- (2) In subsection (3) of that section (entitlement confined to only one deduction), for “deduction” there shall be substituted “ income tax reduction ”.
- (3) In subsection (4A) of that section—
- (a) for the words “a deduction”, in the first and third places where they occur, there shall be substituted “ an income tax reduction ”; and
- (b) for the words “a deduction”, in the second place where they occur, there shall be substituted “ a reduction ”.
- 7 (1) In subsection (1)(b) of section 260 of that Act (apportionment of relief under section 259), for the words from “the deduction” to “equal” there shall be substituted “ the income tax reduction to which each of them is entitled under that section shall be calculated, subject to subsection (2) below, by reference ”.
- (2) In subsection (2) of that section, for the words from “the deduction” to “equal” there shall be substituted “ the income tax reduction to which he is entitled for that year under section 259 shall be calculated by reference ”.
- 8 (1) In subsection (2) of section 261A of that Act (additional personal allowance for a year in which spouses separate), for the words from “that he is entitled to deduct” onwards there shall be substituted “ by reference to which the income tax reduction to which he is entitled under subsection (1) above is calculated shall be treated as reduced by the amount by reference to which the income tax reduction in which that relief consists is, or but for section 256(2)(b) would be, calculated (or to nil where the latter amount is equal to or exceeds the amount which is to be treated as reduced). ”
- (2) In subsection (4) of that section, for “deduction” there shall be substituted “ income tax reduction ”.
- (3) In subsection (5) of that section —
- (a) in paragraph (a), for “relief to which those persons are entitled shall not exceed” there shall be substituted “ income tax reductions to which those persons are entitled shall not exceed an amount equal to an income tax

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- reduction calculated (in accordance with section 256(2)(a)) by reference to  
”; and
- (b) in paragraph (c), for the words from “the deduction” to “equal” there shall be substituted “ the income tax reduction to which each of them is entitled under section 259 or this section shall be calculated by reference ”.
- 9 (1) In subsection (2) of section 262 of that Act (widow’s bereavement allowance)—
- (a) for the words “a deduction from her total income”, where they occur in paragraphs (a) and (b), there shall be substituted “ an income tax reduction ”; and
- (b) for the words after paragraph (b) there shall be substituted— “ the income tax reduction mentioned in paragraph (b) above shall instead be made (without a claim being made and in accordance with section 257A) in relation to her late husband’s liability to tax for that year as if there had been no such election. ”
- (2) For subsections (3) and (4) of that section (cases where allowance transferred back to deceased would be unused) there shall be substituted the following subsections—
- “(3) If the amount of an income tax reduction falling to be made by virtue of subsection (2) above in relation to the liability of a widow’s late husband—
- (a) is less by virtue of section 256(2)(b) than the income tax reduction which, but for subsection (2) above, would have been made in her case by virtue of the election mentioned in that subsection, or
- (b) by virtue of his having no income tax liability to which that reduction is applicable, is nil,
- the widow shall be entitled (in addition to any reduction to which she is entitled by virtue of subsection (1) above and without making a further claim) to an income tax reduction calculated by reference to an amount equal to the unused part of the amount by reference to which the income tax reduction transferred to the late husband in pursuance of subsection (2) above would have fallen to be calculated.
- (3A) In subsection (3) above the references, in relation to an amount to which paragraph (a) or (b) of that subsection applies, to the unused part of an amount by reference to which any income tax reduction would have fallen to be calculated are references to so much of it (including, where paragraph (b) of that subsection applies, all of it) as has no practical effect on the determination of the amount to which that paragraph applies.”
- 10 In section 265(3)(b) of that Act (blind person’s allowance), the words from “section 257A” to “or under” shall be omitted.
- 11 In section 276 of that Act (effect of relief on charges on income), after subsection (1) there shall be inserted the following subsection—
- “(1A) In subsection (1) above the references to relief under this Chapter do not include references to relief consisting in such an income tax reduction as is mentioned in section 256(2).”
- 12 In section 796(1) of that Act (limits on credit for foreign tax), after the words “foreign tax”, in the second place where they occur, there shall be inserted “ but allowing for the making of any other income tax reduction under the Income Tax Acts ”.

*Status: Point in time view as at 01/04/1996.*

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*The Taxes Management Act 1970 (c. 9)*

- 13 In section 37A of the Taxes Management Act 1970 (effect of assessment where allowances transferred)—
  - (a) after the word “person’s”, in the first place where it occurs, there shall be inserted “ liability to income tax or ”;
  - (b) for the words from “any deduction made” to “spouse” there shall be substituted “ any income tax reduction or deduction from total income made in the case of that person’s spouse ”; and
  - (c) for the words from “and where” onwards there shall be substituted “ and the entitlement in that case of the first-mentioned person for the year in question to any income tax reduction or deduction from total income shall be treated as correspondingly reduced. ”

SCHEDULE 9

Section 81.

MORTGAGE INTEREST RELIEF ETC.

*The Taxes Act 1988*

- 1 For paragraph (o) of section 74 of the Taxes Act 1988 (deduction of relevant loan interest in computing profits and gains) there shall be substituted the following paragraph—
  - “(o) any interest in so far as the payment of that interest is or would be, otherwise than by virtue of section 375(2), either—
    - (i) a payment of interest to which section 369 applies, or
    - (ii) a payment of interest to which that section would apply but for section 373(5);”.
- 2 In section 237(5)(b) of the Taxes Act 1988 (no deduction for interest from or against income consisting of bonus issues etc.), for “under section 353” there shall be substituted “ in accordance with section 353(1B) ”.
- 3 Subsections (4) and (5) of section 353 of the Taxes Act 1988 (restriction of relief to basic rate tax) shall cease to have effect.

F554 .....

**Textual Amendments**

**F55** Sch. 9 para. 4 repealed (the repeal coming into force in accordance with s. 42(3)-(5) of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(2)**, Note (with Sch. 8 paras. 55(2), 57(1))

F565 .....

**Textual Amendments**

**F56** Sch. 9 para. 5 repealed (the repeal coming into force in accordance with s. 42(3)-(5) of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(2)**, Note (with Sch. 8 paras. 55(2), 57(1))

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F57 6 .....

**Textual Amendments**

**F57** Sch. 9 para. 6 repealed (the repeal coming into force in accordance with s. 42(3)-(5) of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(2)**, Note (with Sch. 8 paras. 55(2), 57(1))

7 (1) In sections 356D(1) and 357(1) of the Taxes Act 1988, for “eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1)” there shall, in each case, be substituted “, in a case falling or treated as falling within section 355(1)(a), 356 or 358, eligible for relief under section 353 by virtue of section 354”.

F58 (2) .....

F58 (3) .....

F58 (4) .....

**Textual Amendments**

**F58** Sch. 9 para. 7(2)-(4) repealed (the repeal coming into force in accordance with s. 42(3)-(5) of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(2)**, Note (with Sch. 8 paras. 55(2), 57(1))

F59 8 .....

**Textual Amendments**

**F59** Sch. 9 para. 8 repealed (the repeal coming into force in accordance with s. 42(3)-(5) of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(2)**, Note (with Sch. 8 paras. 55(2), 57(1))

9 In section 368(1) of the Taxes Act 1988 (interest in respect of which relief given not allowable as deduction for any other purpose), for “for any other purpose of the Income Tax Acts” there shall be substituted “ for any purpose of the Income Tax Acts except so far as it is so allowable in accordance with subsection (1B) of that section. ”

10 (1) In subsection (2) of section 370 of the Taxes Act 1988 (conditions for interest to be treated as relevant loan interest)—

(a) after “section 353(2)” there shall be inserted “ and any other provision applying to interest falling to be treated as relevant loan interest ”; and

(b) for “from section 74(o) and, where applicable,” there shall be substituted “ (where applicable) from ”.

(2) After subsection (6) of that section there shall be inserted the following subsection—

“(6A) In disregarding section 353(2) for the purposes of subsection (2)(c) above, section 353(1C) and (1D) shall apply for determining whether or not the condition in section 355(1) or 356(1) is fulfilled as (but for section 353(2)) they would apply for the purpose of determining whether or not the case falls, or is treated as falling, within section 355(1)(a) or 356.”

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- 11 In section 375(3) of the Taxes Act 1988 (liability of borrower for excess where deduction should not have been made), for the words from “entitles” to “been allowed” there shall be substituted “ shall be taken as regards the borrower as entitling him to any deduction or to retain any amount deducted and, accordingly, where any amount that has been deducted exceeds the amount which ought to have been deducted ”.

*The Finance Act 1993 (c. 34)*

- 12 Subsection (7) of section 57 of the Finance Act 1993 (transitional provision for bridging loans made before 6th April 1991) shall cease to have effect.

SCHEDULE 10

Section 83.

MEDICAL INSURANCE

*Introductory*

- 1 In this Schedule “the 1989 Act” means the <sup>M52</sup>Finance Act 1989.

**Marginal Citations**

**M52** 1989 c. 26.

*Reduction of relief*

- 2 (1) Section 54 of the 1989 Act (relief on premiums for medical insurance) shall be amended as follows.
- (2) In subsection (3) (relief by deduction from income) for the words from “it shall be deducted” to the end of the subsection there shall be substituted “the individual shall be entitled to relief under this subsection in respect of the payment; and (except where subsections (4) to (6) below apply) relief under this subsection shall be given—
- (a) in accordance with subsections (3A) to (3C) below, and
  - (b) only on a claim made for the purpose.”
- (3) The following subsections shall be inserted after subsection (3)—
- “(3A) Where an individual is entitled to relief under subsection (3) above in respect of one or more payments made in a given year of assessment, the amount of his liability for that year of assessment to income tax on his total income shall be the amount to which he would be liable apart from this section less whichever is the smaller of—
- (a) the amount found under subsection (3B) below, and
  - (b) the amount which reduces his liability to nil.
- (3B) The amount referred to in subsection (3A)(a) above is an amount found by—

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- (a) taking the amount of the payment referred to in subsection (3A) above or (as the case may be) the aggregate amount of the payments there referred to, and
    - (b) finding an amount equal to tax on the amount taken under paragraph (a) above at the basic rate for the year of assessment concerned.
  - (3C) In determining for the purposes of subsection (3A) above the amount of incomer son would be liable apart from this section, no account shall be taken of—
    - (a) any income tax reduction under Chapter I of Part VII of the Taxes Act 1988 or under section 347B of that Act;
    - (b) any income tax reduction under section 353(1A) of the Taxes Act 1988;
    - (c) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 of the Taxes Act 1988 or by way of a credit under section 790(1) of that Act;
    - (d) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment."
  - (4) This paragraph shall apply in relation to payments made on or after 6th April 1994.
- 3
- (1) In sections 257D(8) and 265(3) of the Taxes Act 1988 (total income after deductions) paragraph (d) (deduction on account of payments to which section 54(5) of the 1989 Act applies to be disregarded) shall be omitted.
  - (2) This paragraph shall apply in relation to payments made on or after 6th April 1994.

#### *Surviving spouse*

- 4
- (1) In section 54 of the 1989 Act the following subsection shall be inserted after subsection (2)—
    - “(2A) In a case where—
      - (a) a payment is made in respect of a premium under a contract at a time when the contract meets the requirement in subsection (2) above by virtue of paragraph (c) of that subsection, and
      - (b) a payment is made under the same contract at a time after one of the individuals has died and when the contract does not (apart from this subsection) meet the requirement in subsection (2) above by virtue only of the fact that the surviving spouse is not aged 60 or over at the time,for the purposes of subsection (2) above in its application to the contract the surviving spouse shall be deemed to be aged 60 or over at the time mentioned in paragraph (b) above.”
  - (2) This paragraph shall apply where the first or only payment to be made in respect of a premium under the contract after the death occurs is made on or after 6th April 1994.

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*Small benefits and abolition of certification*

- 5 (1) Section 55 of the 1989 Act (eligible contracts) shall be amended as follows.
- (2) In subsection (2) (conditions for contract's being eligible) the following paragraphs shall be inserted after paragraph (b)—
- “(ba) at the relevant time the contract satisfies the conditions set out in subsection (2A) below,
- (bb) the contract is not one in the case of which subsection (2D) below applies.”.
- (3) Also in subsection (2)—
- (a) after paragraph (c) there shall be inserted “ and ”, and
- (b) paragraph (e) and the word “and” immediately preceding it shall be omitted.
- (4) The following subsections shall be inserted after subsection (2)—
- “(2A) The conditions referred to in subsection (2)(ba) above are that—
- (a) the contract either provides indemnity in respect of all or any of the costs of all or any of the treatments, medical services and other matters for the time being specified in regulations made by the Treasury, or in addition to providing indemnity of that description provides cash benefits falling within rules for the time being so specified,
- (b) the contract does not confer any right other than such a right as is mentioned in paragraph (a) above or is for the time being specified in regulations made by the Treasury,
- (c) the premium under the contract is reasonable, and
- (d) the contract satisfies such other requirements as are for the time being specified in regulations made by the Treasury.
- (2B) In a case where—
- (a) at the relevant time the contract confers a material right, or more than one such right, but
- (b) the total cost to the insurer of providing benefits in pursuance of the material right or (as the case may be) in pursuance of all the material rights would not exceed the prescribed sum,
- the contract shall not thereby be regarded as failing to satisfy at the relevant time the condition set out in subsection (2A)(b) above.
- (2C) For the purposes of subsection (2B) above a material right is a right which—
- (a) is not a right such as is mentioned in subsection (2A)(a) above or such as is for the time being specified in regulations made under subsection (2A)(b) above, and
- (b) is not a right to a cash benefit.
- (2D) This subsection applies in the case of a contract (the main contract) if—
- (a) at least one other contract is entered into which is a contract (a collateral contract) under which a benefit is provided in consideration of the insured's entering into the main contract, and

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- (b) the cost to the insurer of fulfilling his obligations under the collateral contract (or, if there is more than one collateral contract, of fulfilling his obligations under all of them) exceeds the prescribed sum.”
- (5) Subsections (3) to (6) shall be omitted.
- (6) In subsection (9) (approved benefit) for “mentioned in section 56(3)(a) below” there shall be substituted the following paragraphs—
- “*(a)* mentioned in subsection (2A)(a) above, or
- (b)* for the time being specified in regulations made under subsection (2A)(b) above.”
- (7) The following subsections shall be inserted after subsection (9)—
- “(10) For the purposes of this section a benefit is also an approved benefit if it is not a cash benefit and—
- (a)* it is a single benefit provided otherwise than as mentioned in subsection (9) above and the cost to the insurer of providing it does not exceed the prescribed sum, or
- (b)* it is one of a number of benefits provided otherwise than as mentioned in subsection (9) above and the total cost to the insurer of providing the benefits does not exceed the prescribed sum.
- (11) In this section the reference to a premium, in relation to a contract of insurance, is to any amount payable under the contract to the insurer.
- (12) For the purposes of this section the prescribed sum is £30.
- (13) The Treasury may by order substitute for the sum for the time being specified in subsection (12) above such sum as may be specified in the order; and any such substitution shall have effect in relation to cases where the relevant time falls on or after such date as is specified in the order.”
- (8) This paragraph shall apply where the time which is the relevant time for the purposes of section 55 falls on or after 1st July 1994.
- 6 The Board shall not certify a contract under section 56 of the 1989 Act in such a way that the certification is expressed to take effect on or after 1st July 1994.

## SCHEDULE 11

Section 91.

### EXTENSION OF ROLL-OVER RELIEF ON RE-INVESTMENT

- 1 Chapter IA of Part V of the <sup>M53</sup>Taxation of Chargeable Gains Act 1992 shall be amended as follows.

#### Marginal Citations

M53 1992 c. 12.

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*Disposals on which relief available*

2 In section 164A—

- (a) in subsection (1)(a), for the words following “(“the re-investor”)” there is substituted “ on any disposal by him of any asset (“the asset disposed of”); and ”,
- (b) in subsection (2), “Subject to section 164C” is omitted and for “initial holding” (in three places) there is substituted “ asset disposed of ”,
- (c) subsections (3) to (7) are omitted,
- (d) in subsection (9), for “initial holding” there is substituted “ asset disposed of ”, and
- (e) for subsection (12) there is substituted—

“(12) Without prejudice to section 52(4), where consideration is given for the acquisition of any assets some of which are shares to the acquisition of which a claim under this section relates and some of which are not, the consideration shall be apportioned in such manner as is just and reasonable”.

3 For section 164B there is substituted—

**“164B Roll-over relief on re-investment by trustees.**

- (1) Subject to the following provisions of this section, section 164A shall apply, as it applies in such a case as is mentioned in subsection (1) of that section, where there is—
  - (a) a disposal by the trustees of a settlement of any asset comprised in any settled property to which this section applies, and
  - (b) such an acquisition by those trustees of eligible shares in a qualifying company as would for the purposes of that section be an acquisition of a qualifying investment at a time in the qualifying period.
- (2) This section applies—
  - (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
  - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals, and references in this section to individuals include any charity.
- (3) If, at the time of the disposal of the asset mentioned in subsection (1) (a) above, the settled property comprising that asset is property to which this section applies by virtue of subsection (2)(b) above but not all the beneficiaries are individuals, then—
  - (a) only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of section 164A(2)(a)(i), and
  - (b) no reduction under section 164A(2) shall be made in respect of the whole or any part of the balance of the gain.
- (4) Section 164A shall not apply by virtue of this section in a case where, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property which comprises that asset is property to which this

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section applies by virtue of subsection (2)(a) above unless, immediately after the acquisition of shares mentioned in subsection (1)(b) above, the settled property comprising the shares is also property to which this section applies by virtue of subsection (2)(a) above.

(5) Section 164A shall not apply by virtue of this section in a case where, at the time of the disposal of the asset mentioned in subsection (1)(a) above, the settled property which comprises that asset is property to which this section applies by virtue of subsection (2)(b) above unless, immediately after the acquisition of shares mentioned in subsection (1)(b) above—

- (a) the settled property comprising the shares is also property to which this section applies by virtue of subsection (2)(b) above, and
- (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the asset mentioned in subsection (1)(a) above.

(6) If, at any time, in the case of settled property to which this section applies by virtue of subsection (2)(b) above, both individuals and others have interests in possession, the relevant proportion at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—

- (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
- (b) the total amount of all the income of the settled property.

(7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this section shall apply as if—

- (a) the interests of the relevant beneficiaries were a single interest in possession, and
- (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.

(8) In this section references to interests in possession do not include interests for a fixed term.”

4 Sections 164C to 164E are omitted.

5 In section 164H(1), “within the meaning of section 164C” is omitted.

6 In section 164L(10), for the words following “trustees or” there is substituted “any individual or charity by virtue of whose interest, at the time of the acquisition, section 164B applies to the settled property”.

*Acquisitions on which relief available*

7 For section 164A(8) there is substituted—

“(8) For the purposes of this section, a person who acquires any eligible shares in a qualifying company shall be regarded as acquiring a qualifying investment

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unless, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—

- (a) is the company in which the initial holding subsisted, or
- (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the acquisition of the qualifying investment, a member of the same group of companies as the company in which the initial holding subsisted.”

#### *Retirement relief*

8 Section 164A(11) is omitted and after section 164B there is inserted—

#### **“164BA Interaction with retirement relief**

- (1) The provisions of section 164A for making any reduction shall apply before any provisions for calculating the amount of, or giving effect to, any relief under section 163 or 164; and references in that section and this to a chargeable gain (except the second reference in subsection (4)(a) below) shall be construed accordingly.
- (2) Subsection (3) below applies where—
  - (a) any claim for relief is made under section 164A in respect of any chargeable gain, and
  - (b) apart from this Chapter, the whole or any part of that gain would be relieved under section 163 or 164.
- (3) For the purpose of giving relief under section 163 or 164, any reduction under section 164A shall be treated as having been made first against the unrelieved part of the chargeable gain; and only the amount (if any) which is equal to the unrelieved part of the chargeable gain after that reduction shall be treated as exceeding the amount available for relief.
- (4) For the purposes of this section—
  - (a) the unrelieved part of a chargeable gain is so much of that gain as, apart from this Chapter, would constitute a chargeable gain after the application of the appropriate paragraph of Schedule 6,
  - (b) “amount available for relief” has the same meaning as in the appropriate paragraph of that Schedule, and
  - (c) the “appropriate paragraph” means, as the case may be, paragraph 6, 7(1)(b) or 8(1)(b).”

#### *Clawback*

9 (1) In section 164F—

- (a) for subsection (1) there is substituted—

“(1) This section shall apply where a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced, under section 164A or this section, by any amount (“the held-over gain”),

- (b) in subsection (3), for the words from “either” to the end of paragraph (b) there is substituted “charged on any disposal or under this section”,

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- (c) for subsection (4) there is substituted—
- “(4) For the purposes of this section the whole or a part of any held-over gain on the acquisition of the acquired holding shall be treated—
- (a) in accordance with subsection (4A) below as charged on any disposal in relation to which the whole or any part of the held-over gain falls to be taken into account in determining the chargeable gain or allowable loss accruing on the disposal, and
  - (b) as charged under this section so far as it falls to be disregarded in accordance with subsection (11) below.
- (4A) In the case of any such disposal as is mentioned in subsection (4)(a) above, the amount of the held-over gain charged on that disposal—
- (a) shall, except in the case of a part disposal, be the amount taken into account as so mentioned, and
  - (b) in the case of a part disposal, shall be calculated by multiplying the following, that is to say—
    - (i) so much of the amount of the held-over gain as has not already been charged on a previous disposal, and
    - (ii) the fraction used in accordance with section 42(2) for determining, subject to any deductions in pursuance of this Chapter, the amount allowable as a deduction in the computation of the gain accruing on the disposal in question”,
- (d) in subsection (5)—
- (i) in paragraph (a) “or 164D” is omitted, and
  - (ii) in paragraph (c), for the words from “section 164D(4)” to the end there is substituted “ subsections (4) and (4A) above ”,
- (e) in subsection (10), “(within the meaning of section 164D)” is omitted, and
- (f) after that subsection there is inserted—
- “(10A) Where (apart from this subsection) a chargeable gain of any amount would by virtue of subsection (2) above accrue to the person who acquired the acquired holding but, within the period mentioned in subsection (10B) below, that person acquires a qualifying investment (within the meaning of section 164A), that person shall, on making a claim as respects the qualifying investment, be treated—
- (a) as if the amount of the gain were reduced by whichever is the smallest of the following—
    - (i) the actual amount or value of the consideration for the acquisition of the qualifying investment,
    - (ii) in the case of a qualifying investment acquired otherwise than by a transaction at arm’s length, the market value of that investment at the time of its acquisition,
    - (iii) the amount specified for the purposes of this subsection in the claim, and

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- (b) as if the amount or value of the consideration for the acquisition of the qualifying investment were reduced by the amount of the reduction made under paragraph (a) above;

but paragraph (b) above shall not affect the treatment for the purposes of this Act of the other party to the transaction involving the qualifying investment.

(10B) The period referred to in subsection (10A) above is the period (not including any period before the acquisition of the acquired holding) which begins 12 months before and ends 3 years after the time when the chargeable gain accrues or would but for that subsection accrue, together with any such further period after the disposal as the Board may by notice allow.”

- (2) Section 164F as amended by sub-paragraph (1) above shall have effect as follows—
- (a) the reference in subsection (1) to consideration treated as reduced under section 164A includes consideration treated as reduced under section 164D,
  - (b) the reference in subsection (3) to a gain having been charged on any disposal includes any gain having been carried forward from any disposal of shares, and
  - (c) the amounts referred to in subsection (4A)(a) and (b)(i) shall be treated as reduced by any amounts carried forward from any disposal of shares.
- (3) References in sub-paragraph (2) above to an amount being carried forward from a disposal of shares are references to the reduction by that amount, in accordance with section 164D(3)(a), of the amount of the consideration for the disposal of those shares.

#### *Anti-avoidance*

10 In section 164L—

- (a) after subsection (10) there is inserted—

“(10A) For the purposes of this Chapter, where—

- (a) a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced under this Chapter by any amount (“the held-over gain”), and
- (b) after that acquisition, he acquires eligible shares in a relevant company,

he shall not be regarded in relation to his acquisition of those shares in the relevant company as acquiring a qualifying investment for the purposes of section 164A.

(10B) For the purposes of subsection (10A) above a company is a relevant company if—

- (a) where that person has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding,

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- (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Chapter such that, without that or an equivalent claim, there would have been no held-over gain in relation to the acquired holding, or
  - (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above”, and
- (b) in subsection (11), for the definition of “chargeable business assets” there is substituted—

““chargeable business asset”, in relation to any company, means a chargeable asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by—

- (a) the individual acquiring the shares,
- (b) any personal company of that individual,
- (c) a member of a trading group of which the holding company is a personal company of that individual, or
- (d) a partnership of which that individual is a member”.

#### *Miscellaneous*

11 In section 164N, after subsection (1) there is inserted—

“(1A) Every asset of a company is for the purposes of this Chapter a chargeable asset of that company at any time, except one on the disposal of which by the company at that time no gain accruing to the company would be a chargeable gain”.

## SCHEDULE 12

Section 93.

### INDEXATION LOSSES: TRANSITIONAL RELIEF

#### *Introductory*

1 This Schedule applies in relation to chargeable gains and allowable losses accruing to—

- (a) an individual, or
- (b) the trustees of a settlement made before 30th November 1993;

(referred to in this Schedule as “the taxpayer”).

2 (1) This paragraph applies for the purposes of this Schedule, and the determinations required by this paragraph to be made shall be made without regard to paragraphs 4 to 7 below.

(2) If an allowable loss accrues on a disposal made on or after 30th November 1993 and, under the old indexation rules, a greater allowable loss would have accrued, there is an indexation loss in respect of the disposal equal to the amount by which the

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allowable loss which would have accrued under the old indexation rules exceeds the allowable loss accruing on the disposal.

- (3) If a disposal made on or after 30th November 1993 is one on which neither a gain nor a loss accrues and, under the old indexation rules, an allowable loss would have accrued, there is an indexation loss in respect of the disposal equal to the amount of the allowable loss that would have accrued under the old indexation rules.
  - (4) If the total amount of chargeable gains accruing to the taxpayer in any year of assessment for which this Schedule has effect exceeds the allowable losses accruing in that year, there is a relevant gain for that year equal to the amount of the excess.
- 3
- (1) The cases in which the appropriation of an asset by the taxpayer is treated under section 161(1) of the 1992 Act (appropriations to and from stock) as a disposal of the asset include cases in which, if he had sold the asset for its market value, an allowable loss would have accrued to him under the old indexation rules.
  - (2) Where, but for an election under subsection (3) of section 161 of the 1992 Act—
    - (a) an asset appropriated by the taxpayer would have been treated as disposed of as mentioned in subsection (1) of that section, and
    - (b) paragraph 2(2) or (3) above would have applied on the disposal,
 paragraphs 1 and 2 above and 6 and 7 below shall apply, as if the asset had been so treated, to determine for the purposes of subsection (3) of that section any increase to be made in the amount of any allowable loss; and the appropriation of the asset is referred to below as a “relevant appropriation”.
  - (3) Sections 574 to 576 of the Taxes Act (relief for individual on disposal of shares in qualifying trading company) shall apply if an individual who has subscribed for shares as mentioned in section 574(1) disposes of them in circumstances where paragraph 2(3) above applies as they apply in other cases.
  - (4) Where a person makes a claim for relief under subsection (1) of section 574 in the case of a disposal in respect of which there is an indexation loss (referred to below as a “section 574 disposal”)—
    - (a) paragraphs 6 and 7 below shall apply to determine any increase to be made, for the purposes of that subsection, in the amount of the allowable loss, and
    - (b) paragraphs 4 and 5 below shall apply to so much only of the indexation loss as is not relieved under that section.
  - (5) References in this paragraph and paragraphs 6 and 7 below to an increase in any loss include, in circumstances where paragraph 2(3) above applies, a reference to the creation of the loss.

#### *Capital gains tax*

- 4
- (1) Where in the case of any taxpayer—
    - (a) there is a relevant gain for the year 1993-94,
    - (b) the relevant gain exceeds the exempt amount for that year, and
    - (c) there are indexation losses in respect of any disposals made in that year,
 then, for the purposes of the 1992 Act, the amount by which the total amount of chargeable gains accruing to the taxpayer in that year exceeds the allowable losses accruing in the year shall be reduced by the amount mentioned in sub-paragraph (2) below, and shall be so reduced before the deduction of any allowable losses carried

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forward from any previous year or carried back under section 62 from any subsequent year.

- (2) The amount referred to in sub-paragraph (1) above is so much of the total of indexation losses in respect of disposals made in that year as does not exceed—
    - (a) £10,000, or
    - (b) the amount by which the relevant gain exceeds the exempt amount for the year,whichever is the smaller.
- 5
- (1) Where in the case of any taxpayer—
    - (a) there is a relevant gain for the year 1994-95,
    - (b) the relevant gain exceeds the exempt amount for that year, and
    - (c) there are indexation losses in respect of any disposals made in that year or unused indexation losses for the previous year,then, for the purposes of the 1992 Act, the amount by which the total amount of chargeable gains accruing to the taxpayer in the year 1994-95 exceeds the allowable losses accruing in that year shall be reduced by the amount mentioned in sub-paragraph (2) below, and shall be so reduced before the deduction of any allowable losses carried forward from any previous year or carried back under section 62 from any subsequent year.
  - (2) The amount referred to in sub-paragraph (1) above is so much of the total of indexation losses in respect of disposals made in the year 1994-95, plus any unused indexation losses for the previous year, as does not exceed—
    - (a) £10,000 less the aggregate of—
      - (i) the amount of any reduction made under paragraph 4(1) above for the previous year, and
      - (ii) any increase made under paragraph 6(2) below for the previous year, or
    - (b) the amount by which the relevant gain exceeds the exempt amount for the year 1994-95,whichever is the smaller.
  - (3) For the purposes of this paragraph, if the total amount of indexation losses in respect of disposals made by the taxpayer in the year 1993-94 exceeds the aggregate of—
    - (a) the amount of any reduction made under paragraph 4(1) above for that year, and
    - (b) any increase made under paragraph 6(2) below for that year,there are unused indexation losses for that year of an amount equal to the excess.

#### *Income tax*

- 6
- (1) This paragraph applies where, at any time in the period beginning with 30th November 1993 and ending with 5th April 1994, the taxpayer makes any relevant appropriation or any section 574 disposal; and for the purposes of this paragraph there shall be determined—
    - (a) the amount of any reduction for the year 1993-94 which (disregarding relevant appropriations and section 574 disposals) would be made under paragraph 4(1) above, and

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- (b) the amounts of any indexation losses in respect of relevant appropriations or section 574 disposals made in that period.
- (2) If the aggregate of the amounts referred to in sub-paragraph (1)(a) and (b) above does not exceed £10,000, the amount of any allowable loss referable to such an appropriation or disposal shall be increased by any indexation loss in respect of it.
- (3) In any other case, notwithstanding anything in paragraphs 4 and 5 above—
- (a) the aggregate of—
- (i) the amount of any reduction for the year 1993-94 to be made under paragraph 4(1) above, and
- (ii) the amount of any indexation losses in respect of relevant appropriations or section 574 disposals made in the period referred to in sub-paragraph (1) above,
- shall be equal to £10,000 and shall be allocated as the taxpayer may determine between that reduction and increases in allowable losses referable to such appropriations or disposals, and
- (b) no reduction shall be made under paragraph 5 above or 7 below for the year 1994-95.
- 7 (1) This paragraph applies where, at any time in the year 1994-95, the taxpayer makes any relevant appropriation or any section 574 disposal; and for the purposes of this paragraph there shall be determined—
- (a) the amount of any reduction for that year which (disregarding relevant appropriations and section 574 disposals) would be made under paragraph 5(1) above, and
- (b) the amounts of any indexation losses in respect of relevant appropriations or section 574 disposals made in that year.
- (2) If the aggregate of the amounts referred to in sub-paragraph (1)(a) and (b) above does not exceed the limit for 1994-95, that is—
- (a) £10,000, less
- (b) the aggregate of the amount of any reduction made under paragraph 4(1) above for the year 1993-94 and of any increases made under paragraph 6(2) above for that year,
- the amount of any allowable loss referable to such an appropriation or disposal shall be increased by any indexation loss in respect of it.
- (3) In any other case, notwithstanding anything in paragraph 5 above, the aggregate of the amount of any reduction for the year 1994-95 to be made under paragraph 5(1) above and of the amount of any indexation losses in respect of relevant appropriations or section 574 disposals made in that year—
- (a) shall be equal to the limit for 1994-95, and
- (b) shall be allocated as the taxpayer may determine between that reduction and increases in allowable losses referable to such appropriations or disposals.

### *Supplementary*

- 8 (1) In this Schedule—
- “the 1992 Act” means the <sup>M54</sup>Taxation of Chargeable Gains Act 1992, and
- “the old indexation rules” means the 1992 Act as it would have effect if—

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- (a) the amendments made by subsections (1) to (5) of section 93 of this Act, and
  - (b) the repeal of section 103 (collective investment schemes, etc.) and section 111 (building societies) of the 1992 Act by subsection (7) of section 93 of this Act,
- had not come into force.
- (2) Other expressions not defined in this Schedule but used both in it and in the 1992 Act have the same meaning as in that Act.
- (3) References in this Schedule to the reduction of any amount include its reduction to nil.

**Marginal Citations**

M54 1992 c. 12.

SCHEDULE 13

Section 102.

EMPLOYEE SHARE OWNERSHIP TRUSTS

*Introduction*

- 1 The Finance Act 1989 shall be amended as provided in this Schedule.

*Trustees*

- 2 In Schedule 5, in paragraph 3 (trustees) the following sub-paragraph shall be inserted after sub-paragraph (4)—

“(5) This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed.”

- 3 In Schedule 5, the following paragraphs shall be inserted after paragraph 3—

“3A Where a trust is established after the day on which the Finance Act 1994 was passed, the trust deed must make provision as mentioned in one of paragraphs (a) to (c) below—

- (a) provision for the establishment of a body of trustees and complying with paragraph 3(2) to (4) above;
- (b) provision for the establishment of a body of trustees and complying with paragraph 3B(2) to (9) below;
- (c) provision that at any time while the trust subsists there must be a single trustee.

3B (1) The following are the provisions that must be complied with under paragraph 3A(b) above.

(2) The trust deed must—

- (a) appoint the initial trustees;
- (b) contain rules for the retirement and removal of trustees;

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- (c) contain rules for the appointment of replacement and additional trustees.
- (3) The trust deed must be so framed that at any time while the trust subsists the conditions set out in sub-paragraph (4) below are fulfilled as regards the persons who are then trustees; and in that sub-paragraph “the relevant time” means that time.
- (4) The conditions are that—
- (a) the number of trustees is not less than three;
  - (b) all the trustees are resident in the United Kingdom;
  - (c) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;
  - (d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with sub-paragraph (7) or (8) below;
  - (e) all the trustees so selected are persons who are employees of companies which fall within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company.
- (5) For the purposes of this paragraph a trustee is a professional trustee at a particular time if—
- (a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
  - (b) the trustee is not then an employee or director of any company then falling within the founding company’s group, and
  - (c) the trustee meets the requirements of sub-paragraph (6) below;
- and for the purposes of this paragraph a trustee is a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.
- (6) A trustee meets the requirements of this sub-paragraph if—
- (a) he was appointed as an initial trustee and, before being appointed as trustee, was selected by (and only by) the persons who later became the non-professional initial trustees, or
  - (b) he was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected by (and only by) the persons who were the non-professional trustees at the time of the selection.
- (7) Trustees are selected in accordance with this sub-paragraph if the process of selection is one under which—
- (a) all the persons who are employees of the companies which fall within the founding company’s group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,

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- (b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
    - (c) persons gaining more votes are preferred to those gaining less.
  - (8) Trustees are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.
  - (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
    - (a) it is at that time resident in the United Kingdom, and
    - (b) it is the founding company or it is at that time controlled by the founding company.
- 3C (1) This paragraph applies where the trust deed provides that at any time while the trust subsists there must be a single trustee.
- (2) The trust deed must—
  - (a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the United Kingdom and controlled by the founding company;
  - (b) appoint the initial trustee;
  - (c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.
- (3) The trust deed must be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions set out in sub-paragraph (4) below are then fulfilled as regards the persons who are then directors of the company; and in that sub-paragraph “the relevant time” is that time and “the trust company” is that company.
- (4) The conditions are that—
  - (a) the number of directors is not less than three;
  - (b) all the directors are resident in the United Kingdom;
  - (c) the directors include at least one person who is a professional director and at least two persons who are non-professional directors;
  - (d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with sub-paragraph (7) or (8) below;
  - (e) all the directors so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.
- (5) For the purposes of this paragraph a director is a professional director at a particular time if—
  - (a) the director is then a solicitor or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,

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- (b) the director is not then an employee of any company then falling within the founding company’s group,
  - (c) the director is not then a director of any such company (other than the trust company), and
  - (d) the director meets the requirements of sub-paragraph (6) below;
- and for the purposes of this paragraph a director is a non-professional director at a particular time if the director is not then a professional director for those purposes.
- (6) A director meets the requirements of this sub-paragraph if—
    - (a) he was appointed as an initial director and, before being appointed as director, was selected by (and only by) the persons who later became the non-professional initial directors, or
    - (b) he was appointed as a replacement or additional director and, before being appointed as director, was selected by (and only by) the persons who were the non-professional directors at the time of the selection.
  - (7) Directors are selected in accordance with this sub-paragraph if the process of selection is one under which—
    - (a) all the persons who are employees of the companies which fall within the founding company’s group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
    - (b) all the employees of the companies falling within the founding company’s group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
    - (c) persons gaining more votes are preferred to those gaining less.
  - (8) Directors are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company’s group at the time of the selection.
  - (9) For the purposes of this paragraph a company falls within the founding company’s group at a particular time if—
    - (a) it is at that time resident in the United Kingdom, and
    - (b) it is the founding company or it is at that time controlled by the founding company.”
- 4 In Schedule 5, the following shall be inserted at the end of paragraph 12 (position after trust’s establishment)— “ This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed. ”
- 5 In Schedule 5, the following paragraph shall be inserted after paragraph 12—
- “12A (1) Subject to sub-paragraphs (2) and (3) below, a trust which was at the time it was established a qualifying employee share ownership trust shall continue to be one.
- (2) If the trust deed makes provision under paragraph 3A(a) above, the trust shall not be a qualifying employee share ownership trust at any time when the requirements mentioned in paragraph 3(3)(a) to (f) above are not satisfied.

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- (3) If the trust deed makes provision under paragraph 3A(b) above, the trust shall not be a qualifying employee share ownership trust at any time when the conditions mentioned in paragraph 3B(4)(a) to (e) above are not satisfied.
- (4) If the trust deed makes provision under paragraph 3A(c) above, the trust shall not be a qualifying employee share ownership trust at any time when—
  - (a) there is not a single trustee,
  - (b) the trustee is not a company which is resident in the United Kingdom and controlled by the founding company, or
  - (c) the conditions mentioned in paragraph 3C(4)(a) to (e) above are not satisfied as regards the directors of the trustee.
- (5) This paragraph applies in relation to trusts established after the day on which the Finance Act 1994 was passed.”

#### *Securities*

- 6 (1) Section 69 (chargeable events) shall be amended as follows.
  - (2) In subsection (1)(c) (retention of securities at expiry of seven years from acquisition) for “period of seven years” there shall be substituted “qualifying period”.
  - (3) After subsection (4) there shall be inserted—

“(4A) For the purposes of subsection (1)(c) above the qualifying period is—

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

and for this purpose a trust is established when the deed under which it is established is executed.”
- 7 (1) Paragraph 9 of Schedule 5 (transfer of securities) shall be amended as follows.
  - (2) In sub-paragraph (1)(b) for “period of seven years” there shall be substituted “qualifying period”.
  - (3) After sub-paragraph (2) there shall be inserted—

“(2A) For the purposes of sub-paragraph (1) above the qualifying period is—

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

#### *Interpretation*

- 8 In Schedule 5, the following paragraph shall be inserted after paragraph 16—

“17 For the purposes of this Schedule a trust is established when the deed under which it is established is executed.”

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## SCHEDULE 14

Section 112.

## DISTRIBUTIONS OF AUTHORISED UNIT TRUSTS

- 1 Chapter III of Part XII of the Taxes Act 1988 shall be amended in accordance with paragraphs 2 to 5 of this Schedule.

*The new sections*

- 2 The following sections shall be inserted immediately before section 469—

*“ Distributions of authorised unit trusts: general***468H Interpretation.**

- (1) This section has effect for the interpretation of sections 468I to 468R.
- (2) The making of a distribution by an authorised unit trust to a unit holder includes investing an amount on behalf of the unit holder in respect of his accumulation units.
- (3) In relation to an authorised unit trust—
  - (a) “distribution period” means a period by reference to which the total amount available for distribution to unit holders is ascertained; and
  - (b) “distribution accounts” means accounts showing how that total amount is computed.
- (4) The distribution date for a distribution period of an authorised unit trust is—
  - (a) the date specified by or in accordance with the terms of the trust for any distribution for that distribution period; or
  - (b) if no date is so specified, the last day of that distribution period.
- (5) In this Chapter references to foreign income dividends shall be construed in accordance with Chapter VA of Part VI.
- (6) Sections 468I to 468R do not apply to an authorised unit trust which is also an approved personal pension scheme (within the meaning of Chapter IV of Part XIV).

**468I Distribution accounts.**

- (1) The total amount shown in the distribution accounts as available for distribution to unit holders shall be shown as available for distribution in one of the ways set out below.
- (2) It may be shown as available for distribution as dividends which are not foreign income dividends.
- (3) It may be shown as available for distribution as foreign income dividends.
- (4) It may be shown as available for distribution as yearly interest.
- (5) It may be divided into—
  - (a) a part shown as available for distribution as dividends which are not foreign income dividends; and

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- (b) a part shown as available for distribution as foreign income dividends.
- (6) Amounts deriving from income under Schedule A may not be included in any amount shown in the distribution accounts as available for distribution as yearly interest.
- (7) Where distribution accounts show an amount as available for distribution to unit holders in the way set out in subsection (5) above there shall not be any discrimination between unit holders having accumulation units and other unit holders (or between unit holders on other grounds).

#### *Dividend and foreign income distributions*

#### **468J Dividend distributions.**

- (1) Subsection (2) below applies where the total amount or a part of the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as dividends which are not foreign income dividends.
- (2) The Tax Acts shall have effect as if the total amount or, as the case may be, the part were dividends on shares paid on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.
- (3) The trustees of an authorised unit trust may not make an election under section 246A in respect of dividends paid by virtue of this section.
- (4) In the following provisions of this Chapter “a dividend distribution” means a dividend treated as paid by virtue of subsection (2) above.

#### **468K Foreign income distributions.**

- (1) Subsection (2) below applies where the total amount or a part of the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as foreign income dividends.
- (2) The Tax Acts shall have effect (subject to what follows) as if the total amount or, as the case may be, the part were foreign income dividends on shares paid on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.
- (3) In relation to the paying of foreign income dividends by authorised unit trusts Chapter VA of Part VI shall have effect as if the following provisions were omitted—
  - (a) sections 246A and 246B (provisions with respect to election to pay foreign income dividends);
  - (b) sections 246K to 246M (special provisions for subsidiaries); and
  - (c) sections 246S to 246W (international headquarters companies).
- (4) In the following provisions of this Chapter “a foreign income distribution” means a foreign income dividend treated as paid by virtue of subsection (2) above.

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### *Interest distributions*

#### **468L Interest distributions.**

- (1) Subsection (2) below applies where the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as yearly interest.
- (2) The Tax Acts shall have effect (subject to what follows) as if the total amount were payments of yearly interest made on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.
- (3) In the following provisions of this Chapter “an interest distribution” means a payment of yearly interest treated as made by virtue of subsection (2) above.
- (4) The obligation under section 349(2) to deduct a sum in its application to an interest distribution is subject to sections 468M and 468N (and, in its application to an interest distribution to a unit holder in respect of his accumulation units, is an obligation to deduct a sum out of the amount being invested on the unit holder’s behalf).
- (5) Interest distributions shall not be a charge on income for the purposes of section 338(1) but any interest distributions for a distribution period which are interest distributions with respect to which the obligation under section 349(2) (if and to the extent that it applies) is complied with shall be allowed as a deduction against the profits of the authorised unit trust for the accounting period in which the last day of that distribution period falls.
- (6) The deduction mentioned in subsection (5) above may be made—
  - (a) in computing the total profits for the accounting period, after the deduction of any expenses deductible in computing profits apart from section 75 and either before or after the deduction under that section of sums disbursed as expenses of management; or
  - (b) against total profits as reduced by any other relief from tax or against total profits not so reduced.
- (7) Where in any accounting period the amount deductible by virtue of subsection (5) above exceeds the amount from which the deduction is made—
  - (a) the excess may be carried forward to the succeeding accounting period; and
  - (b) the amount so carried forward shall be treated as if it were deductible in that succeeding accounting period by virtue of subsection (5) above.

#### **468M Deduction of tax (simple case).**

- (1) Subsection (2) below applies where—
  - (a) an interest distribution is made for a distribution period to a unit holder; and

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- (b) the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to unit holders derives from eligible income entirely.
- (2) Where this subsection applies, the obligation to deduct under section 349(2) shall not apply to the interest distribution to the unit holder if the residence condition is on the distribution date fulfilled with respect to him.
- (3) Section 468O makes provision with respect to the circumstances in which the residence condition is fulfilled with respect to a unit holder.
- (4) Subject to subsection (5) below, in this Chapter “eligible income” means—
  - (a) any interest on a security which falls within paragraph 5(5)(d) of Schedule 19AA;
  - (b) any interest on a security which is a quoted Eurobond for the purposes of section 124;
  - (c) any dividends falling within section 17(1)3;
  - (d) any proceeds or other realisation falling within section 17(1)4;
  - (e) any amount taxable by virtue of section 123;
  - (f) any other amount, if it is not subject to income tax by deduction.
- (5) “Eligible income” does not include—
  - (a) franked investment income;
  - (b) income under Schedule A;
  - (c) any foreign income dividend;
  - (d) any amount afforded relief from taxation imposed under the laws of a territory outside the United Kingdom under arrangements having effect by virtue of section 788 in relation to that territory.

#### **468N Deduction of tax (mixed funds).**

- (1) Subsection (2) below applies where—
  - (a) an interest distribution is made for a distribution period to a unit holder; and
  - (b) the gross income entered in the distribution accounts for the purposes of computing the total amount available for distribution to unit holders does not derive from eligible income entirely.
- (2) Where this subsection applies, the obligation to deduct under section 349(2) shall not apply to the relevant amount of the interest distribution to the unit holder if the residence condition is on the distribution date fulfilled with respect to him.
- (3) Section 468O makes provision with respect to the circumstances in which the residence condition is fulfilled with respect to a unit holder.
- (4) This is how to calculate the relevant amount of the interest distribution—

$$R = A \times \frac{B}{C}$$

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Where—

R = the relevant amount;

A = the amount of the interest distribution before deduction of tax to the unit holder in question;

B = such amount of the gross income as derives from eligible income;

C = the amount of the gross income.

- (5) In subsection (4) above the references to the gross income are references to the gross income entered as mentioned in subsection (1)(b) above.

#### **468O Residence condition.**

- (1) For the purposes of sections 468M and 468N, the residence condition is fulfilled with respect to a unit holder if—
- (a) there is a valid declaration made by him that he is not ordinarily resident in the United Kingdom; or
  - (b) he holds the rights as a personal representative of a unit holder and—
    - (i) before his death the deceased made a declaration valid at the time of his death that he was not ordinarily resident in the United Kingdom; or
    - (ii) the personal representative has made a declaration that the deceased, immediately before his death, was not ordinarily resident in the United Kingdom.
- (2) For the purposes of sections 468M and 468N, the residence condition is also fulfilled with respect to a unit holder if the unit holder is a company and there is a valid declaration made by the company that it is not resident in the United Kingdom.
- (3) The Board may by regulations make such provision as appears to them to be necessary or expedient modifying the application of this section and section 468P in relation to interest distributions made to or received under a trust.
- (4) Regulations under subsection (3) above may—
- (a) make different provision for different cases; and
  - (b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

#### **468P Residence declarations.**

- (1) A declaration made for the purposes of section 468O must—
- (a) be in such form as may be required or authorised by the Board;
  - (b) be made in writing to the trustees of the authorised unit trust in question; and
  - (c) contain any details or undertakings required by subsections (2) to (4) below.
- (2) A declaration made as mentioned in section 468O(1)(a) or (b)(i) must contain—

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- (a) the name and principal residential address of the person making it; and
  - (b) an undertaking that he will notify the trustees if he becomes ordinarily resident in the United Kingdom.
- (3) A declaration made as mentioned in section 468O(1)(b)(ii) must contain the name of the deceased and his principal residential address immediately before his death.
- (4) A declaration made as mentioned in section 468O(2) must contain—
  - (a) the name of the company making it and the address of its registered or principal office; and
  - (b) an undertaking that the company will notify the trustees if it becomes resident in the United Kingdom.
- (5) For the purposes of determining whether an interest distribution should be made with or without any deduction, the trustees may not treat a declaration as valid if—
  - (a) they receive a notification in compliance with an undertaking under subsection (2) or (4) above that the person in question has become ordinarily resident or, as the case may be, resident in the United Kingdom; or
  - (b) they come into possession of information by some other means which indicates that the person in question is or may be ordinarily resident or, as the case may be, resident in the United Kingdom;but, subject to that, they are entitled to treat the declaration as valid.
- (6) The trustees shall, on being required to do so by a notice given by an officer of the Board, make available for inspection by such an officer any declarations made to them under this section or any specified declaration or description of declarations.
- (7) Where a notice has been given to the trustees under subsection (6) above, the declarations shall be made available within such time as may be specified in the notice and the person carrying out the inspection may take copies of or extracts from them.
- (8) The Board may by regulations make provision for giving effect to this section, including in particular provision requiring trustees and managers of authorised unit trusts to supply information and make available books, documents and other records for inspection on behalf of the Board.
- (9) Regulations under subsection (8) above may—
  - (a) make different provision for different cases; and
  - (b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

*Distributions to corporate unit holder*

**468Q Dividend distribution to corporate unit holder.**

- (1) Subsection (2) below applies where—

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- (a) a dividend distribution for a distribution period is made to a unit holder by the trustees of an authorised unit trust; and
  - (b) on the distribution date for that distribution period the unit holder is within the charge to corporation tax.
- (2) For the purpose of computing corporation tax chargeable in the case of the unit holder the unfranked part of the dividend distribution shall be deemed—
- (a) to be an annual payment and not a dividend distribution, a foreign income distribution or an interest distribution; and
  - (b) to have been received by the unit holder after deduction of income tax at the lower rate for the year of assessment in which the distribution date falls, from a corresponding gross amount.
- (3) This is how to calculate the unfranked part of the dividend distribution—

$$U = \left( \left( A + B \right) \times \frac{C}{D} \right) - B$$

Where—

- U = the unfranked part of the dividend distribution to the unit holder;
- A = the amount of the dividend distribution;
- B = the amount of any foreign income distribution for the distribution period for which that dividend distribution is made to the unit holder;
- C = such amount of the gross income as does not derive from franked investment income;
- D = the amount of the gross income.

- (4) If the calculation in accordance with subsection (3) above produces a value of U that is less than 0, it shall be assumed for the purposes of this section that no part of the dividend distribution is unfranked.
- (5) Where the unit holder is on the distribution date the manager of the scheme, subsection (2) above shall not apply in so far as the rights in respect of which the dividend distribution is made are held by him in the ordinary course of his business as manager of the scheme.
- (6) For the purposes of this section the references to the gross income are references to the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to unit holders for the distribution period in question.

#### **468R Foreign income distribution to corporate unit holder.**

- (1) Subsection (2) below applies where—
  - (a) a foreign income distribution for a distribution period is made to a unit holder by the trustees of an authorised unit trust; and
  - (b) on the distribution date for that distribution period the unit holder is within the charge to corporation tax.
- (2) The provisions of subsections (2) to (6) of section 468Q shall have effect, with the necessary modifications, in relation to the foreign income

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distribution as they have effect in relation to a dividend distribution, and in particular as if for the provisions of subsection (3) of that section there were substituted the provisions of subsection (3) below.

- (3) This is how to calculate the unfranked part of the foreign income distribution—

$$U = \left( \left( A + B \right) \times \frac{E}{D} \right) - A$$

Where—

U = the unfranked part of the foreign income distribution to the unit holder in question;

A = the amount of any dividend distribution for the distribution period for which that foreign income distribution is made to the unit holder;

B = the amount of that foreign income distribution;

E = such amount of the gross income as does not derive from foreign income dividends;

D = the amount of the gross income.”

#### *Other amendments*

- 3 (1) Section 468 (authorised unit trusts) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted “ but paragraph (b) above is without prejudice to the making of distributions which are interest distributions (within the meaning of section 468L) to unit holders ”.
- (3) Subsection (2) (notional dividends of authorised unit trusts) shall be omitted.
- (4) In subsection (3) for the words “subsections (1) and (2) above” there shall be substituted “ subsection (1) above ”.
- (5) In subsection (6) the definition of “distribution period” shall be omitted.
- 4 Sections 468F and 468G shall cease to have effect.
- 5 In section 469 (other unit trusts), in subsection (6) (meaning of “distribution period”) for the words “has the same meaning as in section 468, but” there shall be substituted “ means a period beginning on or after 1st April 1987 over which income from the investments subject to the trusts is aggregated for the purposes of ascertaining the amount available for distribution to unit holders, but ”.
- 6 In section 834(3) of the Taxes Act 1988 (date on which dividends treated as paid) for the words from “except in so far as” to the end there shall be substituted “ except in so far as Chapter III of Part XII makes other provision for dividends treated as paid by virtue of that Chapter ”.

#### *Commencement*

- 7 (1) Subject to sub-paragraph (2) below, this Schedule shall have effect in relation to distribution periods beginning on or after 1st April 1994.
- (2) Nothing in the amendments made by this Schedule shall be taken to permit—

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- (a) the total amount shown in the distribution accounts for a distribution period of an authorised unit trust, or
  - (b) a part of that total amount,
- to be shown as available for distribution as foreign income dividends unless the distribution date for that distribution period is 1st July 1994 or a subsequent date.

## SCHEDULE 15

Section 137.

### ENTERPRISE INVESTMENT SCHEME

#### *Amendments of the Taxes Act 1988*

- 1 Chapter III of Part VII of the Taxes Act 1988 shall be amended as follows:
- 2 For section 289 (the relief) and the heading preceding it there is substituted—

#### *“ENTERPRISE INVESTMENT SCHEME*

#### **289 Eligibility for relief.**

- (1) For the purposes of this Chapter, an individual is eligible for relief, subject to the following provisions of this Chapter, if—
- (a) eligible shares in a qualifying company for which he has subscribed are issued to him and, under section 291, he qualifies for relief in respect of those shares,
  - (b) the shares are issued in order to raise money for the purpose of a qualifying business activity, and
  - (c) the money raised by the issue is employed not later than the time mentioned in subsection (3) below wholly for the purpose of that activity.
- (2) In this Chapter “qualifying business activity”, in relation to a company, means—
- (a) the company or any subsidiary—
    - (i) carrying on a qualifying trade which, on the date the shares are issued, it is carrying on, or
    - (ii) preparing to carry on a qualifying trade which, on that date, it intends to carry on wholly or mainly in the United Kingdom and which it begins to carry on within two years after that date,
 but only if, at any time in the relevant period when the qualifying trade is carried on, it is carried on wholly or mainly in the United Kingdom,
  - (b) the company or any subsidiary carrying on research and development—
    - (i) which, on the date the shares are issued, it is carrying on or which it begins to carry on immediately afterwards, and

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- (ii) from which it is intended that a qualifying trade which the company or any subsidiary will carry on wholly or mainly in the United Kingdom will be derived,  
but only if, at any time in the relevant period when the research and development or the qualifying trade derived from it is carried on, it is carried on wholly or mainly in the United Kingdom, or
  - (c) the company or any subsidiary carrying on oil exploration—
    - (i) which, on the date the shares are issued, it is carrying on or begins to carry on immediately afterwards, and
    - (ii) from which it is intended that a qualifying trade which the company or any subsidiary will carry on wholly or mainly in the United Kingdom will be derived,  
but only if, at any time in the relevant period when the oil exploration or the qualifying trade derived from it is carried on, it is carried on wholly or mainly in the United Kingdom.
- (3) The time referred to in subsection (1)(c) above is—
- (a) the end of the period of twelve months beginning with the issue of the eligible shares, or
  - (b) in the case of money raised only for the purpose referred to in subsection (2)(a) above, the end of that period or, if later, the end of the period of twelve months beginning when the company or subsidiary concerned begins to carry on the qualifying trade,
- and for the purposes of this Chapter, the condition in subsection (1)(c) above does not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.
- (4) Subsection (2)(c) above shall not apply unless—
- (a) throughout the period of three years beginning with the date on which the shares were issued, the company or any subsidiary holds an exploration licence which was granted to it, or to another subsidiary,
  - (b) the exploration is carried out solely within the area to which the licence applies, and
  - (c) on the date on which the shares were issued, neither the company nor any subsidiary held an appraisal licence or a development licence relating to that area or any part of that area.
- (5) Where, at any time after the issue of the shares but before the end of the period mentioned in subsection (4)(a) above, the company or any subsidiary comes to hold an appraisal licence or development licence which relates to the area, or any part of the area, to which the exploration licence relates, the exploration licence and that other licence shall be treated for the purposes of subsection (4)(a) above as a single exploration licence.
- (6) An individual is not eligible for relief in respect of any shares unless the shares are subscribed, and issued, for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (7) In this Chapter “eligible shares” means new ordinary shares which, throughout the period of five years beginning with the date on which they

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are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed.

- (8) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section.

### **289A Form of relief.**

- (1) Where an individual eligible for relief in respect of any amount subscribed for eligible shares makes a claim, then, subject to the following provisions of this Chapter, the amount of his liability for the year of assessment in which the shares were issued ("the current year") to income tax on his total income shall be the following amount.
- (2) That amount is the amount to which he would be so liable apart from this section less whichever is the smaller of—
- (a) an amount equal to tax at the lower rate for the current year on the amount or, as the case may be, the aggregate of the amounts subscribed for eligible shares issued in that year in respect of which he is eligible for relief, and
  - (b) the amount which reduces his liability to nil.
- (3) Subject to subsection (4) below, if in the case of any issue of relevant shares, that is, shares—
- (a) which are issued before 6th October in the current year, and
  - (b) in respect of the amount subscribed for which the individual is eligible for relief,
- the individual so requests in his claim, subsection (1) above shall apply as if, in respect of such part of that issue as may be specified in his claim, the shares had been issued in the preceding year of assessment; and his liability to income tax for both years of assessment shall be determined accordingly.
- (4) Not more than half of the relevant shares comprised in any issue may be treated by virtue of subsection (3) above as issued in the previous year; and the number of relevant shares (comprised in any issues) so treated as issued in a particular year shall not be such that the total amount subscribed for them exceeds £15,000.
- (5) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from this section, no account shall be taken of—
- (a) any income tax reduction under Chapter I of Part VII of this Act or under section 347B,
  - (b) any income tax reduction under section 353(1A),
  - (c) any income tax reduction under section 54(3A) of the Finance Act 1989,
  - (d) 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
  - (e) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.

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- (6) A claim for relief shall not be allowed unless subsection (7) below is complied with but, where it is complied with, the relief may be given at any time when it appears that the conditions for the relief may be satisfied.
- (7) This subsection is complied with if—
- (a) in the case of shares issued for the purpose of a qualifying business activity falling within paragraph (a) of section 289(2), the company or subsidiary concerned has carried on the trade for four months,
  - (b) in the case of shares issued for the purpose of a qualifying business activity falling within paragraph (b) of that subsection or within both paragraph (a) and paragraph (b) of that subsection, the company or subsidiary concerned has carried on the research and development for four months, and
  - (c) in the case of shares issued for the purpose of a qualifying business activity falling within paragraph (c) of that subsection, the company or subsidiary concerned has carried on the exploration for four months.
- (8) Where—
- (a) the company or subsidiary concerned, by reason of its being wound up, or dissolved without winding up, carries on a trade for a period shorter than four months, and
  - (b) it is shown that the winding up or dissolution was for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax,
- subsection (7)(a) above shall have effect as if it referred to that shorter period.
- (9) Where effect is given to a claim for relief by repayment of tax, section 824 shall have effect in relation to the repayment as if the time from which the twelve months mentioned in subsections (1)(a) and (3)(a) of that section are to be calculated were the end of the year of assessment in which the shares are issued or, if subsection (7) above is first complied with in a later year, the end of that later year.

#### **289B Attribution of relief to shares.**

- (1) References in this Chapter, in relation to any individual, to the relief attributable to any shares or issue of shares shall be read, subject to the provisions of this Chapter providing for the reduction or withdrawal of relief, as references to any reduction made in the individual's liability to income tax which is attributed to those shares or that issue in accordance with this section.
- (2) Where an individual's liability to income tax is reduced in any year of assessment ("the current year") under section 289A, then—
- (a) where the reduction is given by reason of an issue of shares made (or treated as made) in the current year, the amount of the reduction shall be attributed to that issue, and
  - (b) where the reduction is given by reason of two or more issues of shares made (or treated as made) in the current year, the reduction—

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- (i) shall be apportioned between those issues in the same proportions as the amounts subscribed by the individual for each issue, and
  - (ii) shall be attributed to those issues accordingly.
- (3) Where under this section an amount of any reduction of income tax is attributed to an issue of shares (“the original issue”) in a company to an individual—
- (a) a proportionate part of that amount shall be attributed to each share comprised in the original issue, and
  - (b) if any bonus shares in that company which are eligible shares are issued to him at any subsequent time—
    - (i) a proportionate part of the total amount attributed immediately before that time to shares comprised in the original issue shall be attributed to each of the shares in the holding comprising those shares and the bonus shares, and
    - (ii) this Chapter shall apply as if the original holding had comprised all those shares.
- (4) Subject to subsection (5) below, in this Chapter references to an issue of shares in any company to an individual are to any shares in the company issued to him on the same day.
- (5) Where section 289A(1) applies in the case of any issue of shares as if part of the issue had been issued in a previous year, this section and the following provisions of this Chapter (except section 290(1)) shall have effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous year).
- (6) Where, at a time when any relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under this Chapter—
- (a) where it falls to be withdrawn, the relief attributable to each of the shares in question shall be reduced to nil, and
  - (b) where it falls to be reduced by any amount, the relief attributable to each of the shares in question shall be reduced by a proportionate part of that amount.”
- 3 (1) In section 290 (minimum and maximum subscriptions), for subsection (2) there is substituted—
- “(2) An individual shall not be eligible for relief in any year of assessment in respect of any amount subscribed for eligible shares exceeding £100,000 (whether the shares are issued in that or a subsequent year).”
- (2) Sub-paragraph (1) above shall have effect for the year 1994-95 and subsequent years of assessment.
- (3) An individual shall not be eligible for relief in respect of the year 1993-94 in respect of any amount subscribed for eligible shares (whether the shares are issued in that or a subsequent year) which, when aggregated with the amounts (if any) on which relief is claimed under the old scheme in respect of that year, exceeds £40,000.
- (4) In this paragraph the “old scheme” means Chapter III of Part VII of the Taxes Act 1988 as it had effect before the amendments made by this Schedule.

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- 4 (1) In section 290A (restriction of relief)—
- (a) for subsection (1) there is substituted—
- “(1) Where—
- (a) a company raises any amount through the issue of eligible shares, and
- (b) the aggregate of that amount and of all other amounts (if any) so raised within the period mentioned in subsection (2) below exceeds £1 million,
- the relief shall not be given in respect of the excess”,
- (b) in subsection (4), for “£750,000” there is substituted “ £1 million ”,
- (c) subsection (10) and the definition of “prospectus” in subsection (11) are omitted, and
- (d) after subsection (11) there is added—
- “(12) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section.”
- (2) References in that section to amounts raised through the issue of eligible shares include amounts raised through the issue before 1st January 1994 of shares which were eligible shares under the old scheme; and the “old scheme” has the same meaning as in paragraph 3 above.

- 5 For section 291 (individuals qualifying for relief) there is substituted—

**“291 Individuals qualifying for relief.**

- (1) An individual qualifies for relief in respect of eligible shares in a company (referred to in this section and sections 291A and 291B as the “issuing company”) if—
- (a) he subscribes for the shares on his own behalf, and
- (b) subject to section 291A(4), he is not at any time in the relevant period connected with the company.
- (2) For the purposes of this section and sections 291A and 291B, an individual is connected with the issuing company if he, or an associate of his, is—
- (a) an employee of, or of a partner of, the issuing company or any subsidiary,
- (b) a partner of the issuing company or any subsidiary, or
- (c) subject to section 291A, a director of, or of a company which is a partner of, the issuing company or any subsidiary,
- or if he, or an associate of his, is so connected by virtue of section 291B.
- (3) In subsection (2) above “subsidiary”, in relation to the issuing company, means a 51 per cent. subsidiary of the issuing company—
- (a) whether it becomes such a subsidiary before, during or after the year of assessment in respect of which the individual concerned claims relief, and
- (b) whether or not it is such a subsidiary while he or his associate is such an employee, partner or director.
- (4) For the purposes of subsections (2) and (3) above and section 291A, in the case of a person who is both a director and an employee of a company—

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- (a) references (however expressed) to him in his capacity as a director of the company include him in his capacity as an employee of the company, but
  - (b) (apart from that) he is not to be treated as an employee of the company.
- (5) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section and sections 291A and 291B.

### **291A Connected persons: directors.**

- (1) An individual is not connected with the issuing company by reason only that he, or an associate of his, is a director of that or another company unless he or his associate (or a partnership of which he or his associate is a member)—
- (a) receives a payment from the issuing company or a related person during the relevant period, or
  - (b) is entitled to receive such a payment in respect of that period or any part of it.
- (2) In this section—
- (a) “related person”, in relation to the issuing company, means—
    - (i) any company of which the individual or his associate is a director and which is a subsidiary or a partner of the issuing company or of a subsidiary, and
    - (ii) any person connected with the issuing company or with a company falling within sub-paragraph (i) above, and
  - (b) any reference to a payment to an individual includes a payment made to him indirectly or to his order or for his benefit.
- (3) For the purposes of subsection (1) above there shall be disregarded—
- (a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by him or his associate in the performance of his duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, and
  - (f) any reasonable and necessary remuneration which —
    - (i) is paid for services rendered to the issuing company or related person in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and
    - (ii) is taken into account in computing the profits or gains of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the

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basis of which those profits or gains are assessed under that Schedule.

(4) An individual (“the subscriber”) who subscribes for eligible shares (“the relevant shares”) may qualify for the relief notwithstanding his connection with the company at any time in the relevant period if—

- (a) he is so connected by reason only of his, or his associate’s, being a director of, or of a company which is a partner of, the issuing company or a subsidiary in receipt of, or entitled to receive, remuneration as such, and
- (b) the following conditions are satisfied;

and in this subsection and subsection (5) below “remuneration” includes any benefit or facility.

(5) The conditions are that—

- (a) in relation to the director (whether he is the subscriber or his associate), his remuneration, or the remuneration to which he is entitled, (leaving out of account any reasonable and necessary remuneration falling within subsection (3)(f) above) consists only of remuneration which is reasonable remuneration for services rendered to the company of which he is a director in his capacity as such,
- (b) the subscriber was issued with eligible shares (whether the relevant shares or a previous issue of eligible shares) at a time when he had never been—
  - (i) connected with the issuing company, or
  - (ii) an employee of any person who previously carried on the trade carried on by the issuing company, and
- (c) where the issue of the relevant shares did not satisfy paragraph (b) above, they were not issued after the end of the period of five years beginning with the date of the latest issue of eligible shares which satisfied that paragraph,

and in paragraph (b) above “trade” includes any business, profession or vocation, and the reference to a trade previously carried on includes part of such a trade.

(6) In this section “subsidiary”, in relation to the issuing company, means a 51 per cent. subsidiary of the issuing company.

### **291B Connected persons: persons interested in capital etc. of company.**

(1) An individual is connected with the issuing company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—

- (a) the issued ordinary share capital of the company or any subsidiary,
- (b) the loan capital and issued share capital of the company or any subsidiary, or
- (c) the voting power in the company or any subsidiary.

(2) An individual is connected with the issuing company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or any subsidiary or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of

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the company or subsidiary (the “company in question”) which would then be available for distribution to equity holders of the company in question.

- (3) For the purposes of subsection (2) above—
- (a) the persons who are equity holders of the company in question, and
  - (b) the percentage of the assets of the company in question to which the individual would be entitled,
- shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company in question are available for distribution to its equity holders.
- (4) An individual is connected with a company if he has control of it or of any subsidiary.
- (5) Where an individual subscribes for shares in a company with which (apart from this subsection) he is not connected, he shall nevertheless be treated as connected with it if he subscribes for the shares as part of any arrangement which provides for another person to subscribe for shares in another company with which (assuming it to be an issuing company) that or any other individual who is a party to the arrangement is connected.
- (6) In this section “subsidiary”, in relation to the issuing company, means a 51 per cent. subsidiary of the issuing company—
- (a) whether it becomes such a subsidiary before, during or after the year of assessment in respect of which the individual concerned claims relief, and
  - (b) whether or not it is such a subsidiary while he has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.
- (7) For the purposes of this section the loan capital of a company shall be treated as including any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).
- (8) For the purposes of this section an individual shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and there shall be attributed to any person any rights or powers of any other person who is an associate of his.
- (9) In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by the company or any subsidiary by overdrawing an account with a person carrying on a business of banking shall be treated as loan capital of the company or subsidiary if the debt arose in the ordinary course of that business.
- (10) Section 840 applies for the purposes of this section.”

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- (a) in subsection (1), for the words preceding paragraph (a) there is substituted “ An individual is not eligible for relief in respect of any shares in a company if, at the date mentioned in subsection (2) below ”, and
- (b) in subsection (4)(a) for “any of its subsidiaries” there is substituted “ any company which is a 51 per cent. subsidiary of that company on the date referred to in subsection (2) above ”.

7 In section 293 (qualifying companies)—

- (a) for subsections (1) to (3) there is substituted—

“(1) Subject to section 294, a company is a qualifying company (whether it is resident in the United Kingdom or elsewhere) if it complies with the requirements of this section.

(2) The company must, throughout the relevant period, be an unquoted company and be—

- (a) a company which exists wholly for the purpose of carrying on one or more qualifying trades or which so exists apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities, or
- (b) a company whose business consists wholly of—
  - (i) the holding of shares or securities of, or the making of loans to, one or more qualifying subsidiaries of the company, or
  - (ii) both the holding of such shares or securities, or the making of such loans, and the carrying on of one or more qualifying trades.

(3) In this section “qualifying subsidiary”, in relation to a company, means a subsidiary of a kind which that company may hold by virtue of section 308”,

- (b) subsection (4) is omitted,
- (c) in subsection (7), at the end there is inserted “ or would not be fully paid up if any undertaking to pay cash to the company at a future date were disregarded ”,
- (d) for subsection (8) there is substituted—

“(8) Subject to section 308, the company must not—

- (a) at any time in the relevant period control (or together with any person connected with it control) another company or be under the control of another company (or another company and any other person connected with that other company), or
- (b) at any such time be a 51 per cent. subsidiary of another company or itself have a 51 per cent. subsidiary,

and no arrangements must be in existence at any time in that period by virtue of which the company could fall within paragraph (a) or (b) above.

(8A) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section and sections 294, 295 and 296”, and

- (e) subsections (9) to (11) are omitted.

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- 8 In section 294 (companies with interests in land), in subsection (1), for the words preceding paragraph (a) there is substituted “ Subject to section 296, a company is not a qualifying company in relation to any shares if at any time during the relevant period ”.
- 9 In section 296 (provisions supplementary to section 294), subsection (6) is omitted.
- 10 In section 297 (qualifying trades)—
- (a) in subsection (1), “(6) and” is omitted,
  - (b) in subsection (2)—
    - (i) in paragraph (a), for “commodities, shares, securities, land or futures” there is substituted “ land, in commodities or futures or in shares, securities or other financial instruments ”,
    - (ii) in paragraph (g), after “another person” there is inserted “ (other than a company of which the company providing the services or facilities is the subsidiary) ”, and
    - (iii) paragraphs (h) and (j) are omitted,
  - (c) in subsection (5), for the words preceding paragraph (a) there is substituted “ A trade shall not be treated as failing to comply with this section by reason only that it consists to a substantial extent of receiving royalties or licence fees if ”, and
  - (d) in subsection (9), for “289(1)(d)” there is substituted “ 289(2)(c) ”.
- 11 In section 298 (supplementary provisions)—
- (a) for subsection (4) there is substituted—
    - “(4) The Treasury may by order amend section 297 and this section in such manner as they consider expedient”,
  - (b) in subsection (5), the definition of “property development” is omitted,
  - (c) at the end of that subsection there is inserted—
    - “ and section 312(1A)(b) shall apply to determine the relevant period for the purposes of that section ”, and
  - (d) subsections (6) to (8) are omitted.
- 12 For section 299 (disposal of shares) there is substituted—

**“299 Disposal of shares.**

- (1) Where an individual makes any disposal of eligible shares before the end of the relevant period, then—
  - (a) if the disposal is made otherwise than by way of a bargain made at arm’s length, any relief attributable to those shares shall be withdrawn, and
  - (b) in the case of any disposal made by way of a bargain made at arm’s length—
    - (i) if, apart from this subsection, the relief attributable to those shares is greater than the amount mentioned in subsection (2) below, it shall be reduced by that amount, and
    - (ii) if sub-paragraph (i) above does not apply, any relief attributable to those shares shall be withdrawn.

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- (2) The amount referred to in subsection (1) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount or value of the consideration which the individual receives for the shares.
- (3) Where, in relation to any issue of shares held by any person, the disposal referred to in subsection (1) above is a disposal of part of the shares, that subsection shall apply to the relief that was attributable to that part.
- (4) Where an individual's liability to income tax has been reduced in any year of assessment under section 289A in respect of any issue of shares and the amount of the reduction ("A") is less than the amount ("B") which is equal to tax at the lower rate for that year on the amount subscribed for the issue, subsection (2) above shall have effect as if the amount or value referred to in that subsection were reduced by multiplying it by the fraction—

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

- (5) Where an option, the exercise of which would bind the grantor to purchase any shares, is granted to an individual during the relevant period, any relief attributable to the shares to which the option relates shall be withdrawn.
- (6) Where any relief is attributable to shares of any class in a company which have been issued to an individual at different times, any disposal by him of shares of that class shall be treated for the purposes of this section as relating to those issued earlier rather than to those issued later.
- (7) Where relief is attributable to any shares which have by virtue of any such allotment as is mentioned in section 126(2)(a) of the 1992 Act (not being an allotment for payment) fallen to be treated under section 127 of that Act as the same asset as a new holding, a disposal of the whole or part of the new holding shall be treated for the purposes of this section as a disposal of the whole or a corresponding part of those shares.
- (8) For the purposes of this section—
  - (a) shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange,
  - (b) references to a disposal of shares include references to the grant of an option the exercise of which would bind the grantor to sell the shares, and
  - (c) section 312(1A)(a) applies to determine the relevant period."

13 In section 299A (loan linked investments)—

- (a) in subsection (1), for the words preceding paragraph (a) there is substituted "An individual is not eligible for relief in respect of any shares in a company if", and
- (b) after subsection (2) there is inserted—

“(3) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section.”

14 In section 300 (value received from company)—

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- (a) for subsection (1) there is substituted—
- “(1) Subsection (1A) below applies where an individual who subscribes for eligible shares in a company—
- (a) has, before the issue of the shares but within the relevant period, received any value from the company, or
- (b) after their issue but before the end of the relevant period, receives any such value.
- (1A) Where any relief is attributable to those shares, then (unless the amount of the relief has already been reduced on account of the value received)—
- (a) if it is greater than the amount mentioned in subsection (1B) below, it shall be reduced by that amount, and
- (b) if paragraph (a) above does not apply, the relief shall be withdrawn.
- (1B) The amount referred to in subsection (1A) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount of the value received; and section 299(4) above applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.
- (1C) References in subsection (1) above to the receipt of value from a company include references to the receipt of value from a 51 per cent. subsidiary of that company, whether it becomes such a subsidiary before or after the individual concerned receives any value from it; and other references to the company in this section and section 301 shall be read accordingly.
- (1D) Notwithstanding anything in subsection (2) below, for the purposes of this section an individual is not to be treated as receiving value from a company by reason only of the payment to him, or any associate of his, of any remuneration for services rendered to the company as a director if the remuneration is reasonable remuneration.
- (1E) Section 291(4) applies for the purposes of subsection (1D) above as it applies for the purposes of section 291A, and the reference in subsection (1D) above to the payment of remuneration includes the provision of any benefit or facility”, and
- (b) in subsection (2)—
- (i) in paragraph (c), for “291(3)(a) or (e)” there is substituted “291A(3)(a) or (f)”, and
- (ii) in paragraph (h), for “section 291(3)(a), (b), (c), (d) or (e)” there is substituted “any of the paragraphs of section 291A(3) ”.
- 15 In section 301 (provisions supplementary to section 300)—
- (a) subsections (1) and (2) are omitted,
- (b) after subsection (6) there is inserted—
- “(6A) Section 312(1A)(a) applies to determine the relevant period for the purposes of section 300”, and

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- (c) subsection (7) is omitted.
- 16 In section 302 (replacement capital)—
- (a) for subsection (1) there is substituted—
- “(1) Any relief attributable to any shares in a company held by an individual shall be withdrawn if—
- (a) at any time in the relevant period, the company or any subsidiary—
- (i) begins to carry on as its trade or as part of its trade a trade which was previously carried on at any time in that period otherwise than by the company or any subsidiary, or
- (ii) acquires the whole, or a greater part, of the assets used for the purposes of a trade previously so carried on, and
- (b) subsection (2) below applies in relation to that individual”,
- (b) in subsection (3), for the words preceding paragraph (a) there is substituted “ Any relief attributable to any shares in a company held by an individual shall be withdrawn if ”,
- (c) after subsection (4) there is inserted—
- “(4A) In determining whether any relief attributable to any shares in a company (the “issuing company”) held by a person who—
- (a) is a director of, or of a company which is a partner of, the issuing company or any subsidiary, and
- (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 291A(5)(a),
- is to be withdrawn, the second reference in paragraph (b) of each of subsections (2) and (3) above and, so far as relating to those paragraphs, in subsection (1)(a)(i) above to any time in the relevant period shall be read as a reference to any time before the end of the relevant period.
- (4B) Section 291(4) applies for the purposes of subsection (4A) above as it applies for the purposes of section 291A, and in subsection (4A) above “remuneration” includes any benefit or facility”, and
- (d) in subsection (5)—
- (i) for the definition of “subsidiary” there is substituted—
- “ “subsidiary” means a company which would be a subsidiary if the relevant period for the purposes of section 308 were the period referred to in section 312(1A)(a) ”, and
- (ii) at the end of that subsection there is inserted— “ and section 312(1A)(a) applies to determine the relevant period for the purposes of this section ”.
- 17 In section 303 (value received by persons other than claimants)—
- (a) for subsection (1) there is substituted—
- “(1) Where any relief is attributable to any shares in a company held by an individual, subsection (1A) below shall apply if at any

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time in the relevant period the company or any subsidiary repays, redeems or repurchases any of its share capital which belongs to any member other than—

- (a) that individual, or
- (b) another individual the relief attributable to whose shares in the company is thereby withdrawn or reduced by virtue of section 299 or 300(2)(a),

or makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(1A) The relief—

- (a) if it is greater than the amount mentioned in subsection (1B) below, shall be reduced by that amount, and
- (b) if paragraph (a) above does not apply, shall be withdrawn.

(1B) The amount referred to in subsection (1A) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount receivable by the member or, if greater, the nominal value of the share capital in question; and section 299(4) above applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section”,

- (b) in subsection (3), for “291(4)” there is substituted “ 291B(1) ” and for “291” there is substituted “ 291B ”,
- (c) after subsection (6) there is inserted—

“(6A) The reference in subsection (3) above to the receipt of value from a company includes the receipt of value from a subsidiary, and the reference to the company in subsection (6) above shall be read accordingly”,

- (d) subsection (8) is omitted,
- (e) after subsection (9) there is inserted—

“(9A) References in this section to a subsidiary of a company are references to a 51 per cent. subsidiary of the company, whether it becomes such a subsidiary before or after the redemption, repayment, repurchase or payment in question or, as the case may be, the receipt of value in question.

(9B) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section”, and

- (f) subsections (10) and (11) are omitted.

18 For section 304 (husband and wife) there is substituted—

**“304 Husband and wife.**

- (1) Section 299(1) shall not apply to a disposal of shares to which an amount of relief is attributable made by a married man to his wife or a married woman to her husband at a time when they are living together.
- (2) Where such shares issued to one of them (“the transferor”) are transferred to the other (“the transferee”) by a transaction inter vivos to which that section

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does not apply, this Chapter shall have effect, in relation to any subsequent disposal or other event, as if—

- (a) the transferee were the person who had subscribed for the shares,
- (b) the transferee's liability to income tax had been reduced under section 289A in respect of those shares for the same year of assessment as that for which the transferor's liability was so reduced and, accordingly, that amount of relief had continued to be attributable to the shares notwithstanding the transfer.

- (3) Any assessment for reducing or withdrawing the relief by reason of any such disposal or other event shall be made on the transferee”.

19 For section 305 (re-organisation of share capital) there is substituted—

**“305 Reorganisation of share capital.**

- (1) Subsection (2) below applies where—

- (a) there is by virtue of any allotment in the relevant period, being such an allotment for payment as is mentioned in section 126(2)(a) of the 1992 Act, a reorganisation affecting ordinary shares,
- (b) immediately before the reorganisation an amount of relief (“X”) is attributable to the shares, and
- (c) both—
  - (i) the amount subscribed for the shares (“Z”), and
  - (ii) the market value of the shares immediately before the reorganisation,exceed the market value of the shares immediately after the reorganisation.

- (2) Where this subsection applies, the relief attributable to the shares shall be reduced by the following amount—

$$\frac{X \times Y}{Z}$$

where “Y” is whichever is the smaller of the amounts by which Z, and the market value of the shares immediately before the reorganisation, exceed the market value of the shares immediately after the reorganisation.

- (3) Subsection (2) above also applies where—

- (a) an individual, who at any time in the relevant period has received, or become entitled to receive, in respect of any ordinary shares in a company, a provisional allotment of shares in or debentures of the company, disposes of his rights, and
- (b) that subsection would have applied if he had not disposed of the rights but the allotment had been made to him by virtue of those rights.

- (4) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section”.

20 After section 305 there is inserted—

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**“305A Relief for loss on disposal of shares.**

- (1) Section 574 shall apply on the disposal by an individual of shares to which relief is attributable as it applies to a disposal by him of shares in a qualifying trading company for which he has subscribed (“qualifying trading company” and “subscribed” having for this purpose the same meaning as in that section).
- (2) For the purposes of that section (as applied by this) sections 575(1) and (3) and 576(2) and (3) shall apply”.

21

In section 306 (claims)—

- (a) in subsection (1)—
  - (i) in paragraph (a), for “289(8)(a), (b) or (c)” there is substituted “289A(7)(a), (b) or (c)”, and
  - (ii) for paragraph (b) there is substituted—
    - “(b) not later than twelve months after an inspector authorises the issue of a certificate for the purposes of subsection (2) below”,
- (b) after subsection (3) there is inserted—
  - “(3A) A company may not furnish an inspector with a statement in respect of any shares issued in any year of assessment—
    - (a) later than two years after the end of that year of assessment, or
    - (b) if the period of four months referred to in subsection (1) (a) above ended after the end of that year, later than two years after the end of that period,
 but section 289B(5) shall not apply for the purposes of this subsection”,
  - (c) in subsection (8), for “entitled to” there is substituted “eligible for”,
  - (d) in subsection (10), the second sentence is omitted, and
  - (e) after that subsection there is inserted—
    - “(11) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section”.

22

In section 307 (withdrawal of relief)—

- (a) in subsection (1), the words from “but” to the end are omitted,
- (b) for subsection (2) there is substituted—
  - “(1A) Relief may not be withdrawn, in relation to shares issued by a company on any date, on the ground that the company is not a qualifying company or that the requirements of section 289(1)(b) or (c) are not met unless—
    - (a) the company has given notice under section 310, or
    - (b) an inspector has given notice to the company stating that, by reason of that ground, the whole or any part of the relief given to individuals to whom the shares were issued on that date was not, in his opinion, due.

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- (1B) The giving of notice by an inspector under subsection (1A) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.
- (2) Subject to subsections (3) to (7) below, no assessment for withdrawing relief may be made, and no notice may be given under subsection (1A) above, more than six years after the end of the year of assessment—
- (a) in which the time mentioned in section 289(3) falls, or
  - (b) in which the event by reason of which the claimant ceases to be eligible for relief occurs,
- whichever is the later”
- (c) in subsection (6)—
- (i) in paragraph (a), for “289(11)” there is substituted “ 289(6) ”,
  - (ii) after that paragraph there is inserted—
    - “(aa) in the case of relief withdrawn by virtue of section 289(1)(c), the date on which the relief was granted”, and
  - (iii) after paragraph (c) there is inserted—
    - “(cca) in the case of relief withdrawn by virtue of section 299(5), the date on which the option was granted”,
- (d) after subsection (8) there is inserted—
- “(8A) References in this section to the withdrawal of relief include its reduction”, and
- (e) subsection (9) is omitted.
- 23 In section 308 (application to subsidiaries)—
- (a) after subsection (5) there is inserted—
    - “(5A) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section”, and
  - (b) subsection (6) is omitted.
- 24 Section 309 (further provisions as to subsidiaries) is omitted.
- 25 In section 310 (information)—
- (a) in subsection (1), for “304(2) to (6)” there is substituted “ 304 ”,
  - (b) in subsection (2), for “289(11)” there is substituted “ 289(1)(c) or (6) ”,
  - (c) in subsection (5), for “289(11), 291(10)” there is substituted “ 289(6), 291B(5) ”,
  - (d) in subsection (6), for “289(11)” (in both places) there is substituted “ 289(6) ” and for “291(10)” there is substituted “ 291B(5) ”, and
  - (e) subsections (10) and (11) are omitted.
- 26 In section 311 (nominees, etc.)—

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- (a) in subsection (2), for the words preceding “this Chapter” there is substituted “Where eligible shares are held on a bare trust for two or more beneficiaries”, and
- (b) in subsection (2B), for the words preceding paragraph (a) there is substituted— “In any case where this subsection applies, sections 289A and 289B shall have effect as if”.

27

In section 312 (interpretation)—

- (a) in subsection (1)—
  - (i) in the definition of “control”, for “291(7), 308(2) and 309(6)(a)” there is substituted “291B(4) and 308(2)”,
  - (ii) after the definition of “director” there is inserted—
    - ““eligible for relief” has the meaning given by section 289(1),
    - “eligible shares” has the meaning given by section 289(7)”,
  - (iii) the definition of “fixed-rate preference share capital” is omitted,
  - (iv) the definition of “the relevant period” is omitted,
  - (v) for the definition of “the relief” and “relief” there is substituted—
    - ““relief” means relief under this Chapter,
    - “subsidiary”, in relation to any company (except in the expression “51 per cent. subsidiary” or where otherwise defined), means a subsidiary of that company of a kind which that company may hold under section 308,
    - “51 per cent. subsidiary”, in relation to any company, means (except in the case of references to a company which is a 51 per cent. subsidiary on a particular date or at a particular time) a company which is a 51 per cent. subsidiary of that company at any time in the relevant period (applying subsection (1A)(a) below)”,
    - and
  - (vi) for the definition of “unquoted company” there is substituted—
    - ““unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public”,
- (b) after that subsection there is inserted—
  - “(1A) In any provision of this Chapter “relevant period”, in relation to relief in respect of any eligible shares issued by a company, means whichever of the following periods is applied for the purposes of that provision (disregarding section 289B(5))—
    - (a) the period beginning with the incorporation of the company (or, if the company was incorporated more than two years before the date on which the shares were issued, beginning two years before that date) and ending five years after the issue of the shares, and
    - (b) the period beginning with the date on which the shares were issued and ending either—
      - (i) three years after that date, or

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- (ii) in a case falling within section 289(2)(a) where the company or subsidiary concerned had not begun to carry on the trade in question on that date, three years after the date on which it begins to carry on that trade.
- (1B) For the purposes of the definition of “unquoted company” in subsection (1) above, shares, stocks, debentures or other securities are marketed to the general public if they are—
  - (a) listed on a recognised stock exchange,
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in on the Unlisted Securities Market or dealt in outside the United Kingdom by such means as may be designated.
- (1C) In subsection (1B) above “designated” means designated by an order made by the Board for the purposes of that subsection; and an order made for the purposes of paragraph (b) of that subsection may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.
- (1D) Section 828(1) does not apply to an order made for the purposes of subsection (1B) above.
- (1E) Where a company is an unquoted company at the time when any shares are issued, it shall not be treated for the purposes of this Chapter as ceasing to be an unquoted company in relation to those shares at any subsequent time by reason only that any shares, stocks, debentures or other securities of the company are at that time listed on an exchange, or dealt in by any means, designated by such an order if the order was made after the shares were issued”,
  - (c) in subsection (2), for “section 291” there is substituted “ sections 291 to 291B ”,
  - (d) for subsections (4) and (5) there is substituted—
    - “(4) In this Chapter—
      - (a) references in any provision to the reduction of any relief attributable to any shares include a reference—
        - (i) to the reduction of the relief to nil, and
        - (ii) where no relief has yet been given, to the reduction of the amount which apart from that provision would be the relief, and
      - (b) references to the withdrawal of any relief, in respect of any shares, are to the withdrawal of the relief attributable to those shares or, in a case where no relief has yet been given, to ceasing to be eligible for relief in respect of those shares.
- (5) For the purposes of this Chapter, the market value at any time of any asset shall be taken to be the price which it might reasonably

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be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it”, and

- (e) in subsection (7), for “289(1)(d)” there is substituted “ 289(2)(c) ”.

*Amendments of the Taxation of Chargeable Gains Act 1992*

- 28 The <sup>M55</sup>Taxation of Chargeable Gains Act 1992 shall be amended as follows:

**Marginal Citations**

M55 1992 c. 12.

- 29 In section 150 (business expansion schemes), at the end of subsection (1) there is inserted “ and references in this section to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued before 1st January 1994 ”.

- 30 After that section there is inserted—

**“150A Enterprise investment scheme.**

- (1) For the purpose of determining the gain or loss on any disposal of eligible shares by an individual where—
- (a) an amount of relief is attributable to the shares, and
  - (b) apart from this subsection there would be a loss,
- the consideration given by him for the shares shall be treated as reduced by the amount of the relief.

- (2) Subject to subsection (3) below, if on any disposal of eligible shares by an individual after the end of the period referred to in section 312(1A)(a) of the Taxes Act where an amount of relief is attributable to the shares, there would (apart from this subsection) be a gain, the gain shall not be a chargeable gain.

- (3) Where—

- (a) an individual’s liability to income tax has been reduced (or treated by virtue of section 304 of the Taxes Act (husband and wife) as reduced) for any year of assessment under section 289A of that Act in respect of any issue of shares, and
- (b) the amount of the reduction (“A”) is less than the amount (“B”) which is equal to tax at the lower rate for that year on the amount subscribed for the issue,

then, if there is a disposal of the shares on which there is a gain, subsection (2) above shall apply only to so much of the gain as is found by multiplying it by the fraction—

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

- (4) Any question as to—

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- (a) which of any shares issued to a person at different times a disposal relates, being shares to which relief is attributable, or
    - (b) whether a disposal relates to shares to which relief is attributable or to other shares,
- shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act; and Chapter I of this Part shall have effect subject to the foregoing provisions of this subsection.
- (5) Sections 104, 105 and 107 shall not apply to shares to which relief is attributable.
  - (6) Where—
    - (a) an individual holds shares which form part of the ordinary share capital of a company, and
    - (b) relief is attributable to some of the shares but not others,then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this section) separately to the shares to which relief is attributable and to the other shares (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
  - (7) Where—
    - (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
    - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
    - (c) immediately following the reorganisation, relief is attributable to the existing holding or the allotted shares,sections 127 to 130 shall not apply in relation to the existing holding.
  - (8) Sections 135 and 136 shall not apply in respect of shares to which relief is attributable.
  - (9) Where the relief attributable to any shares is reduced by virtue of section 305(2) of the Taxes Act—
    - (a) the sums allowable as deductions from the consideration in the computation, for the purposes of capital gains tax, of the gain or loss accruing to an individual on the disposal of any of the allotted shares or debentures shall be taken to include the amount of the reduction apportioned between the allotted shares or (as the case may be) debentures in such a way as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable, and
    - (b) the sums so allowable on the disposal (in circumstances in which the preceding provisions of this section do not apply) of any of the shares referred to in section 305(1)(a) shall be taken to be reduced by the amount mentioned in paragraph (a) above, similarly apportioned between those shares.
  - (10) There shall be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the relief being given or withdrawn.

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- (11) Chapter III of Part VII of the Taxes Act (enterprise investment scheme) applies for the purposes of this section to determine whether relief is attributable to any shares and, if so, the amount of relief so attributable; and “eligible shares” has the same meaning as in that Chapter.
- (12) References in this section to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994”.
- 31 At the end of section 164M of that Act (exclusion of double relief) there is inserted “ but the reference in this section to that Chapter is to that Chapter as it applies in relation to shares issued before 1st January 1994 ”.
- 32 (1) After that section there is inserted—
- “164MA Exclusion of double relief**
- If a person makes a claim for relief under Chapter III of Part VII of the Taxes Act (enterprise investment scheme) in respect of any shares, those shares shall not be, or be treated as ever having been, eligible shares”.
- (2) This paragraph has effect in relation to shares issued on or after 1st January 1994.
- 33 In section 164N(1), in the definition of “eligible shares”, for “and 164M” there is substituted “ 164M and 164MA ”.
- 34 In section 231(1)(d), “(business expansion scheme)” is omitted.

SCHEDULE 16

Section 138.

FOREIGN INCOME DIVIDENDS

**PART I**

THE NEW CHAPTER

- 1 In Part VI of the Taxes Act 1988 (company distributions, tax credits etc.) the following Chapter shall be inserted after Chapter V—

*Status: Point in time view as at 01/04/1996.*

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## “CHAPTER VA

### FOREIGN INCOME DIVIDENDS

#### *Election by company paying dividend*

#### **Election by company paying dividend.**

- 246A) Where a company pays a dividend, the dividend shall be treated as a foreign income dividend for the purposes of this Chapter if the company elects for it to be so treated in accordance with this section and section 246B.
- (2) An election may not be made under this section as regards a dividend unless the dividend is paid, or to be paid, in cash.
- (3) An election may not be made under this section as regards a dividend which is paid, or to be paid, to a person by virtue of his holding a share in respect of which there are arrangements for the holder to choose whether, or in what form, dividends are to be paid; and the arrangements may be for the holder to choose to be paid a dividend by a company other than the one which issued the share.
- (4) Where at a given time—
- (a) a company pays one dividend in respect of each of two or more shares of the same class, and
  - (b) payment is on the same terms as respects all the shares involved,
- an election may not be made under this section as regards any of the dividends unless an election is made as regards each of the dividends.
- (5) Where at a given time—
- (a) a company pays two or more dividends in respect of each of two or more shares of the same class, and
  - (b) payment is on the same terms as respects all the shares involved,
- an election may not be made under this section as regards any one of the dividends in respect of a given share unless an election is also made as regards the corresponding dividend in respect of each of the other shares involved.
- (6) Subject to subsection (7) below, a company which has more than one class of share capital may not make an election under this section as regards any dividend.
- (7) In a case where—
- (a) a company has more than one class of share capital,
  - (b) at a given time the company pays a dividend in respect of each share of each such class, and
  - (c) all of those dividends are paid on the same terms,
- the company may elect that each of those dividends is to be treated as a foreign income dividend.

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- (8) For the purposes of subsection (7) above a dividend is paid on the same terms as another dividend if the relevant proportion in the case of each dividend is the same; and the relevant proportion, in relation to a dividend, is the proportion which the amount of the dividend bears to the nominal value of the share in respect of which the dividend is paid.
- (9) For the purposes of subsections (6) and (7) above fixed-rate preference shares shall not be treated as constituting a class of share capital; and “fixed-rate preference shares” shall be construed in accordance with section 95(5).
- (10) Where an election is made under this section as regards a dividend in respect of which an election is in force under section 247(1)—
- (a) the election under this section shall have effect as if it were also a notice to the collector under section 247(3) stating that the paying company does not wish the election under section 247(1) to have effect in relation to the dividend as regards which the election under this section is made;
  - (b) if the election under this section is revoked, the revocation shall have effect as if it were also a revocation of the notice deemed by paragraph (a) above;
  - (c) the notice deemed by paragraph (a) above may not be revoked otherwise than as mentioned in paragraph (b) above;
  - (d) if the notice deemed by paragraph (a) above is revoked it shall be treated as never having been made.

**Procedure for making election.**

246B) An election under section 246A—

- (a) must be made by notice to the inspector;
  - (b) must be made not later than the time the dividend is paid;
  - (c) may be revoked by a further notice to the inspector before that time (without prejudice to the making of another election as regards the same dividend);
  - (d) cannot be revoked after the dividend is paid.
- (2) A notice under subsection (1)(a) above must—
- (a) identify the dividend in respect of which the election is made, and
  - (b) be in such form as the Board may require.
- (3) Where section 246A(4), (5) or (7) applies—
- (a) the same notice must be used to elect as regards all the dividends concerned, and
  - (b) the notice may identify the dividends concerned, or any of them, by means of a general description.

*Recipient of foreign income dividend*

**No tax credit for recipient.**

246C Section 231(1) shall not apply where the distribution there mentioned is a foreign income dividend.

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### **Individuals etc.**

- 246(1) Where a company pays a foreign income dividend in a case in which an individual is beneficially entitled to the dividend, that individual shall be treated as having received on the date of the payment income of an amount which, if reduced by an amount equal to income tax on that income at the lower rate for the year of assessment in which the date of the payment fell, would be equal to the amount of the dividend.
- (2) Where subsection (1) above applies—
- (a) no assessment shall be made on the individual in respect of income tax at the lower rate on that income but he shall be treated as having paid tax at the lower rate on it or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;
  - (b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid;
  - (c) to the extent that it would not otherwise be so treated, that income shall be treated as income to which (without prejudice to paragraph (a) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F;
  - (d) that income shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.
- (3) Where a company pays a foreign income dividend to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased; and the preceding provisions of this subsection shall be construed as if they were contained in Part XVI.
- (4) Where a company pays a foreign income dividend to trustees and the dividend is income to which section 686 applies—
- (a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received;
  - (b) income of that amount shall be treated as having arisen to the trustees on the date of the payment and as if it had been chargeable to income tax at the lower rate;
  - (c) paragraphs (a) to (d) of subsection (2) above shall, with the substitution of “income” for “total income” and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under subsection (1) above.
- (5) Subsections (1) and (1A) of section 233 shall not apply where the distribution mentioned in either of those subsections is a foreign income dividend.

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*Companies: payments and receipts*

**Foreign income dividend not franked payment.**

246E A foreign income dividend shall not constitute a distribution for the purposes of the definition of “franked payment” in section 238(1).

**Calculation of ACT where company receives foreign income dividend.**

246F(1) Where in any accounting period a company receives foreign income dividends, the company shall not be liable to pay advance corporation tax in respect of foreign income dividends paid by it in that period unless the amount of the foreign income dividends paid by it in that period exceeds the amount of the foreign income dividends received by it in that period.

- (2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount equal to the excess.
- (3) If the amount of foreign income dividends received by a company in an accounting period exceeds the amount of the foreign income dividends paid by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as foreign income dividends received by the company in that period.
- (4) This section shall have effect subject to section 246T and paragraph 2(6) of Schedule 23A.
- (5) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to this section.

**Information relating to foreign income dividends.**

246G(1) Where section 234A applies by virtue of the fact that a foreign income dividend is paid by a company, references in that section to an appropriate statement shall be construed as references to a written statement—

- (a) in such form as the Board may require,
- (b) showing the amount of the dividend paid,
- (c) showing the date of the payment, and
- (d) stating that the dividend carries no entitlement to a tax credit;

and in such a case section 234A(7) shall not apply.

- (2) In a case where—
  - (a) a requirement is imposed on a company under section 234A(2) or (3) in relation to a foreign income dividend paid by it, and
  - (b) the company fails to comply with the requirement,
 no election may be made by the company under section 246J or 246K as regards the dividend or any part of it.

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### **Power of inspector to require information.**

- 246(1) This section applies where a return made by a company for a return period in accordance with Schedule 13 shows that the company has paid foreign income dividends in the period.
- (2) The inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating to the dividends as he may reasonably require for the purposes of any enactment relating to foreign income dividends.
- (3) Without prejudice to the generality of subsection (2) above, the notice may require information as to the persons to whom dividends are paid.XXXX

### *Foreign source profit and distributable foreign profit*

### **Foreign source profit and distributable foreign profit.**

- 246(1) Where for an accounting period of a company there is any income, or any chargeable gain, in respect of which double taxation relief is afforded, then so much of that income or gain as forms part of the company's chargeable profits for the period is a foreign source profit of the company for the period.
- (2) Subsection (3) below applies where in the accounting period concerned there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.
- (3) In finding for the purposes of this section whether, or how much of, any income or gain forms part of the company's chargeable profits for the period the company may allocate the deduction in such amounts and to such of its profits for the period as it thinks fit.
- (4) Where a company has a foreign source profit for an accounting period, such part of it as exceeds the relevant amount of tax is for the purposes of this Chapter a distributable foreign profit of the company for the period.
- (5) Where the amount of foreign tax payable in respect of the foreign source profit exceeds the amount of corporation tax payable, before double taxation relief is afforded, in respect of that profit, the relevant amount of tax is the amount of foreign tax payable in respect of that profit.
- (6) Where subsection (5) above does not apply, the relevant amount of tax is an amount equal to the aggregate of—
- the amount of foreign tax payable in respect of the foreign source profit, and
  - the amount of corporation tax payable in respect of that profit after double taxation relief is afforded.
- (7) In this section “double taxation relief” means—
- relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or
  - unilateral relief under section 790(1) which takes that form;

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and “double taxation arrangements” here means arrangements having effect by virtue of section 788.

- (8) References in this section to a company’s chargeable profits for an accounting period are to the amount of its profits for that period on which corporation tax falls finally to be borne; and section 238(4) shall apply for the purposes of this subsection.
- (9) For the purposes of this section foreign tax is any tax, imposed by the laws of a territory outside the United Kingdom, for which double taxation relief is afforded.
- (10) Section 788(5) shall apply for the purposes of this section.

*Matching of dividend with distributable foreign profit*

**Matching of dividend with distributable foreign profit.**

- 24(1) Where a company pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) a distributable foreign profit of the company; and subsections (2) to (6) below shall have effect with regard to matching.
  - (2) Different parts of a dividend may be matched with different distributable foreign profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same distributable foreign profit.
  - (3) A foreign income dividend (or part of one) may be matched with a distributable foreign profit (or part of one) only if the amount of the distributable foreign profit or part is equal to the amount of the dividend or part.
  - (4) Subject to subsection (5) below, where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) a distributable foreign profit of the company for that period or for the accounting period immediately preceding it, but without the need to exhaust distributable foreign profits for one of those periods before taking those for the other period.
  - (5) Where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) a distributable foreign profit of the company for any subsequent accounting period, but only if there is no amount of unmatched distributable foreign profit of the company for the given period and no such amount for the accounting period immediately preceding the given period.
  - (6) Where a distributable foreign profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.

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### **Matching: subsidiaries.**

246K) This section applies where a company (the subsidiary) is a 51 per cent. subsidiary of another company (the parent); but this is subject to section 246L.

(2) In a case where—

- (a) an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
- (b) the subsidiary has a distributable foreign profit for its accounting period,

the whole of the profit is for the purposes of this section an eligible profit for the parent's accounting period.

(3) In a case where—

- (a) part of an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
- (b) the subsidiary has a distributable foreign profit for its accounting period,

then, to the extent of the appropriate fraction, the profit is for the purposes of this section an eligible profit for the parent's accounting period.

(4) The appropriate fraction is one—

- (a) whose numerator is equal to the number of the days in the subsidiary's accounting period that coincide with days in the parent's accounting period, and
- (b) whose denominator is equal to the number of the days in the subsidiary's accounting period.

(5) Where the parent pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) an eligible profit; and subsections (6) to (11) below shall have effect with regard to matching.

(6) No election as to matching may be made unless the subsidiary gives its written consent in such form as the Board may require.

(7) Different parts of a dividend may be matched with different eligible profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same eligible profit.

(8) A foreign income dividend (or part of one) may be matched with an eligible profit (or part of one) only if the amount of the eligible profit or part is equal to the amount of the dividend or part.

(9) Subject to subsection (10) below, where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) an eligible profit for that period or for the accounting period immediately preceding it, but without the need to exhaust eligible profits for one of those periods before taking those for the other period.

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- (10) Where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) an eligible profit for any subsequent accounting period, but only if there is no amount of unmatched eligible profit derived from the same subsidiary for the given period and no such amount for the accounting period immediately preceding the given period.
- (11) Where an eligible profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.
- (12) References in this section to a company apply only to bodies corporate; and in determining for the purposes of this section whether one company is a 51 per cent. subsidiary of another company, that other company shall be treated as not being the owner—
  - (a) of any share capital which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade, or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

#### **Requirement as to subsidiaries.**

- 246(1) Section 246K(5) does not apply unless the subsidiary is a 51 per cent. subsidiary of the parent throughout the relevant period (determined under subsection (3) or (4) below).
  - (2) In this section “the payment period” means the accounting period of the parent in which it pays the dividend as regards which an election under section 246K is proposed.
  - (3) If the proposed election involves only eligible profits deriving from an accounting period of the subsidiary coinciding with the payment period, the relevant period is the payment period.
  - (4) In any other case the relevant period is one that—
    - (a) begins with the beginning of the payment period or (if earlier) the beginning of the first or only relevant accounting period of the subsidiary, and
    - (b) ends with the end of the payment period or (if later) the end of the last or only relevant accounting period of the subsidiary.
  - (5) For the purposes of subsection (4) above a relevant accounting period of the subsidiary is an accounting period of the subsidiary for which there is a distributable foreign profit which—
    - (a) is (as to the whole or part) an eligible profit, and
    - (b) would, under the proposed election, be to any extent matched with the dividend as regards which the election is proposed.
  - (6) Section 246K(12) shall apply in determining for the purposes of this section whether the subsidiary is a 51 per cent. subsidiary of the parent at any given time.

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**Matching: further provisions.**

246M) Where a parent elects under section 246K as regards an eligible profit for an accounting period, the following rules shall have effect for the purposes of this Chapter—

- (a) to the extent provided for in the election, the eligible profit shall be treated as a separate distributable foreign profit of the parent for the parent's accounting period and as matched;
- (b) the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) shall be treated as reduced accordingly or (depending on the circumstances) as extinguished;
- (c) the foreign source profit of which the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) forms a part shall be treated as correspondingly divided between the parent and the subsidiary or (depending on the circumstances) as a foreign source profit of the parent alone for its accounting period.

(2) Where an election is made under section 246J or 246K with regard to anything which is or represents a distributable foreign profit of a subsidiary (or part of such a profit) no further election can be made with regard to it under the other section.

*Repayment or set-off of advance corporation tax*

**ACT to be repaid or set off against corporation tax liability.**

246N) This section and section 246Q apply where—

- (a) a company pays a foreign income dividend in an accounting period (the relevant period), and
- (b) the company does not treat itself as an international headquarters company at any time in the period by virtue of section 246S(9).

(2) In a case where—

- (a) the company pays an amount of advance corporation tax in respect of qualifying distributions actually made by it in the relevant period,
- (b) the amount, or part of it, is available to be dealt with under this section, and
- (c) there is as regards the company an amount of notional foreign source advance corporation tax for the relevant period,

an amount of the advance corporation tax paid shall be repaid to the company, or set off, or partly repaid and partly set off, in accordance with this section and section 246Q.

(3) In the following provisions of this section “the relevant advance corporation tax” means the advance corporation tax paid as mentioned in subsection (2) (a) above.

(4) The amount of the relevant advance corporation tax to be repaid or (as the case may be) set off, or partly repaid and partly set off, is whichever of the following is smaller—

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- (a) so much of the relevant advance corporation tax as is available to be dealt with under this section;
  - (b) so much of the relevant advance corporation tax as is equal to the amount which is, as regards the company, the amount of notional foreign source advance corporation tax for the relevant period (found under section 246P).
- (5) So much of the relevant advance corporation tax as remains after deducting the aggregate of the deductible amounts is available to be dealt with under this section; and each of the following is a deductible amount—
- (a) an amount equal to so much (if any) of the relevant advance corporation tax as has been repaid;
  - (b) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company's corporation tax liability for the relevant period under section 239(1) or, if there is—
    - (i) any amount of advance corporation tax from a preceding accounting period,
    - (ii) any amount of surrendered advance corporation tax, or
    - (iii) any amount of advance corporation tax from a succeeding accounting period,
 as would have been so set off if there had been no amounts as mentioned in sub-paragraphs (i) to (iii) above;
  - (c) an amount equal to so much (if any) of the relevant advance corporation tax as has been dealt with under section 239(3);
  - (d) an amount equal to so much (if any) of the relevant advance corporation tax as is advance corporation tax the benefit of which has been surrendered by the company under section 240;
  - (e) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company's corporation tax liability for the relevant period by virtue of the previous application of this section and section 246Q.
- (6) For the purposes of subsection (5)(b) above—
- (a) advance corporation tax from a preceding accounting period is advance corporation tax which by virtue of section 239(4) is treated for the purposes of section 239 as paid by the company in respect of distributions made by it in the relevant period;
  - (b) surrendered advance corporation tax is advance corporation tax which by virtue of section 240 is so treated;
  - (c) advance corporation tax from a succeeding accounting period is advance corporation tax which by virtue of section 239(3) is so treated;
- and in applying subsection (5)(b) above in a case where there is any amount as mentioned in subsection (5)(b)(i) to (iii), it shall be assumed that the company would not have surrendered the benefit of any of the relevant advance corporation tax under section 240.
- (7) No amount shall be repaid or set off under this section and section 246Q unless the company makes a claim for the purpose.

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### **Notional foreign source advance corporation tax.**

246P(1) As regards the company mentioned in section 246N(1), the amount of notional foreign source advance corporation tax for the relevant period is the amount of advance corporation tax which—

- (a) the company would have paid in respect of distributions made by it in the relevant period, and
- (b) would not have been set off against the company's corporation tax liability for the relevant period under section 239(1),

on the assumptions mentioned in subsection (2) below.

(2) The assumptions are that—

- (a) the qualifying foreign income dividends were the only distributions made by the company in the relevant period,
- (b) no distributions were received (or treated for the purposes of section 246F as received) by the company in the relevant period,
- (c) no amounts of advance corporation tax were by virtue of section 239(3) or (4) or section 240 treated for the purposes of section 239 as having been paid in respect of distributions made by the company in the relevant period,
- (d) the benefit of the advance corporation tax paid in respect of distributions made by the company in the relevant period was not surrendered under section 240;
- (e) the company's profits for the relevant period on which corporation tax fell finally to be borne consisted of the matched foreign source profits and no other profits, and
- (f) the amount of corporation tax charged in respect of a matched foreign source profit actually arising in an accounting period other than the relevant period was found by reference to—
  - (i) the rate of foreign tax, within the meaning given by section 246I(9), actually chargeable in respect of the profit (having regard to the time when it arose), and
  - (ii) the rate of corporation tax that would have applied had the profit arisen in the relevant period.

(3) A foreign income dividend is a qualifying foreign income dividend if—

- (a) it is a matched foreign income dividend paid by the company in the relevant period, and
- (b) the company has elected for it to be a qualifying foreign income dividend.

(4) A foreign income dividend the whole of which is, at the material time, matched with the whole or part of a distributable foreign profit of the company is a matched foreign income dividend.

(5) Where there is a foreign income dividend only part of which is at the material time matched as mentioned in subsection (4) above, the part of the dividend which at that time is so matched shall be treated for the purposes of this section as a separate dividend and, accordingly, as a matched foreign income dividend.

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- (6) The company may elect that matched foreign income dividends paid by it in the relevant period are qualifying foreign income dividends only if the amount found under paragraph (a) of subsection (7) below exceeds the amount found under paragraph (b) of that subsection; and where there is such an excess the election may only be made as regards matched foreign income dividends whose total amount is the same as or less than the amount of the excess.
- (7) The amounts referred to in subsection (6) above are—
- (a) the total amount of foreign income dividends paid by the company in the relevant period (other than excluded dividends);
  - (b) the total amount of foreign income dividends received (or treated for the purposes of section 246F as received) by the company in the relevant period;
- and for the purposes of this subsection an excluded dividend is a foreign income dividend which by virtue of section 246G(2) is not capable of being matched.
- (8) A matched foreign source profit is a foreign source profit of which a matched distributable foreign profit forms part; and for the purposes of this subsection “a matched distributable foreign profit” means a distributable foreign profit of the company the whole or part of which is, at the material time, matched with a qualifying foreign income dividend, or with part of such a dividend, or with different such dividends or parts.
- (9) Where the matched foreign source profit is a foreign source profit of which a partly matched distributable foreign profit forms part, for the purposes of any calculation required by subsections (1) and (2) above the amount of the matched foreign source profit shall be taken to be reduced by an amount which bears to the full amount of the matched foreign source profit the same proportion as the unmatched part of the distributable foreign profit bears to the amount of the distributable foreign profit.
- (10) For the purposes of subsection (9) above—
- (a) “a partly matched distributable foreign profit” means a distributable foreign profit of the company part of which is not, at the material time, matched as mentioned in subsection (8) above, and
  - (b) “the unmatched part of the distributable foreign profit” shall be construed accordingly.
- (11) For the purposes of this section—
- (a) “the relevant period” shall be construed in accordance with section 246N(1);
  - (b) “the material time” means the time at which the claim mentioned in section 246N(7) is made.
- (12) References in this section to matching shall be construed in accordance with sections 246J to 246M.
- (13) Section 238(4) shall apply for the purposes of this section.

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**Repayment or set-off: supplementary.**

246Q(1) Subsections (2) and (3) below shall have effect to determine whether the amount which is the smaller of the amounts found under section 246N(4) is to be repaid, set off, or partly repaid and partly set off.

(2) If at the time when it falls to be determined whether the amount mentioned in subsection (1) above is to be repaid or set off—

- (a) advance corporation tax paid (or treated for the purposes of section 239 as paid) by the company in respect of distributions made by it in the relevant period has so far as possible been set against its liability to corporation tax for the period under section 239(1), but
- (b) the company's liability to corporation tax for the period is to any extent undischarged,

the amount mentioned in subsection (1) above shall so far as possible be set off against the company's liability to corporation tax for the relevant period (and an amount of that liability equal to the amount so set off shall accordingly be discharged); and any excess of the amount mentioned in subsection (1) above over the amount so set off shall be repaid.

(3) Where paragraph (a) of subsection (2) above applies but paragraph (b) of that subsection does not, the whole of the amount mentioned in subsection (1) above shall be repaid.

(4) No amount shall be repayable under section 246N and this section until the expiry of nine months from the end of the relevant period.

(5) An amount of advance corporation tax which has been dealt with under section 246N and this section—

- (a) shall not be set off under section 239(1) against the company's liability to corporation tax for any accounting period;
- (b) shall not be available for the purposes of a claim under section 240.

(6) A return made by the company for the relevant period under section 11 of the Management Act, or an amendment of such a return, shall be treated as a claim for the purposes of section 246N and this section if the return or (as the case may be) the amendment contains such particulars as the inspector may require.

(7) A claim for those purposes which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.

(8) In a case where—

- (a) a claim is made under section 246N and this section, and
- (b) by virtue of the claim, an amount of advance corporation tax is repaid or set off which has already been set off by virtue of section 239(4) against the company's corporation tax liability for an accounting period falling after the accounting period to which the claim relates,

the set-off by virtue of section 239(4) of that amount shall be treated for the purposes of section 252 as if it ought not to have been made.

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- (9) In determining for the purposes of subsection (8) above whether an amount repaid or set off by virtue of a claim under section 246N and this section is an amount which has already been set off against the company's corporation tax liability for an accounting period, amounts of advance corporation tax repaid or set off by virtue of that claim shall be treated as having been set off against that liability only after any other amounts of advance corporation tax that were capable of being set off against that liability have been taken into account.
- (10) Where section 252 applies by virtue of this section the reference in subsection (5) of that section to the Management Act shall be treated as not including a reference to section 34 of that Act.
- (11) In this section "the relevant period" shall be construed in accordance with section 246N(1).

### **Supplementary claims.**

246R(1) This section applies where—

- (a) a claim is made under sections 246N and 246Q, and
  - (b) at any time after the claim is made the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in the accounting period to which the claim relates.
- (2) The company may as regards that accounting period make a further claim under sections 246N and 246Q (a supplementary claim) so as to take account of the election.
  - (3) Subsections (5) and (6) below shall apply in determining for the purposes of the supplementary claim the amount of notional foreign source advance corporation tax for the accounting period to which that claim relates.
  - (4) In subsections (5) and (6) below a "previously counted dividend" means a foreign income dividend (or part of one) which was included in an election made by the company under section 246P for the purposes of an earlier claim as regards the accounting period (and which, accordingly, was treated as a qualifying foreign income dividend for those purposes).
  - (5) In applying section 246P for the purposes of the supplementary claim, a previously counted dividend shall be treated as not being a qualifying foreign income dividend notwithstanding the election mentioned in subsection (4) above; and the company may not include the previously counted dividend in any further election made under section 246P for the purposes of the supplementary claim.
  - (6) In relation to an election which the company proposes to make under section 246P for the purposes of the supplementary claim, section 246P(6) shall have effect as if for the reference to matched foreign income dividends whose total amount is the same as or less than the amount of the excess there mentioned there were substituted a reference to matched foreign income dividends whose total amount, when added to the total amount of the previously counted dividends, gives an amount which is equal to or less than the amount of that excess.

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- (7) A company may make more than one supplementary claim as regards any accounting period.

*International headquarters companies*

**International headquarters companies.**

246(S) For the purposes of this Chapter a company is an international headquarters company in an accounting period if—

- (a) at least one of the first three conditions (set out in subsections (2) to (5) below) is fulfilled, and
  - (b) the fourth condition (set out in subsection (7) below) is fulfilled; but the fourth condition need not be fulfilled if the second condition is fulfilled.
- (2) The first condition is that—
- (a) the company is wholly owned by another company throughout the accounting period, and
  - (b) that other company is a foreign held company in the accounting period.
- (3) The second condition is that—
- (a) the company is wholly owned by another company throughout the accounting period,
  - (b) that other company is not resident in the United Kingdom at any time in the accounting period,
  - (c) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are quoted in the official list of a recognised stock exchange other than a stock exchange in the United Kingdom,
  - (d) at a time falling within the accounting period or the period of 12 months immediately preceding it, shares in that other company have been the subject of dealings on a recognised stock exchange other than a stock exchange in the United Kingdom, and
  - (e) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are not quoted in the official list of a recognised stock exchange in the United Kingdom;
- but this is subject to subsection (8) below.
- (4) For the purposes of subsection (3)(e) above, shares that (apart from this subsection) would be regarded as quoted in the official list of a recognised stock exchange shall be regarded as not being so quoted if the issuer of the shares is not subject, in relation to them, to the full requirements applicable by virtue of listing rules to the listing of shares on that exchange; and in this subsection “listing rules” shall be construed in accordance with section 142(6) of the Financial Services Act 1986.
- (5) The third condition is that—

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- (a) at each given time in the accounting period each shareholder of the company owns at least 5 per cent. of the company's share capital, and
  - (b) the test mentioned in subsection (6) below is satisfied.
- (6) The test is that at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by—
- (a) persons who are not companies and who are not resident in the United Kingdom at any time in the accounting period,
  - (b) companies which are foreign held companies in the accounting period, or
  - (c) persons falling within paragraph (a) above and companies falling within paragraph (b) above.
- (7) The fourth condition is that at each given time in the accounting period not more than 20 per cent. of the company's ordinary share capital is ultimately owned by persons who are not companies and are resident in the United Kingdom; and where any shares are not directly owned by a person who is not a company their ultimate ownership shall be found by tracing ownership through any corporate holders to persons who are not companies on such basis as is reasonable.
- (8) Notwithstanding subsection (3) above, the second condition shall also be treated as fulfilled in relation to a company (the company concerned) and an accounting period if—
- (a) the company concerned is throughout the accounting period wholly owned by another company, and that other company is throughout the period wholly owned by a company which satisfies the conditions set out in subsection (3)(b) to (e) above,
  - (b) there are two or more companies (intermediary companies) which throughout the accounting period beneficially own between them all the share capital of the company concerned, and there is another company which throughout the period wholly owns all the intermediary companies and which satisfies the conditions set out in subsection (3)(b) to (e) above, or
  - (c) there are two or more companies (relevant companies) which throughout the accounting period beneficially own between them all the share capital of the company concerned, and one of the relevant companies is a company which throughout the period wholly owns all the other relevant companies and which satisfies the conditions set out in subsection (3)(b) to (e) above;
- and in determining for the purposes of this subsection whether a particular company satisfies the conditions set out in subsection (3)(b) to (e) above, references in subsection (3)(b) to (e) to "that other company" shall be construed as references to that particular company.
- (9) Where a company pays a foreign income dividend, for the purposes of this Chapter it may treat itself as an international headquarters company if—
- (a) in the company's opinion it is likely to be an international headquarters company in the accounting period in which the dividend is paid, and

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- (b) in a case where the dividend is paid in the company's second accounting period or a subsequent accounting period, it is an international headquarters company in the immediately preceding accounting period;
- and for the purposes of paragraph (a) above the company's opinion held at the time the dividend is paid is to be taken.
- (10) For the purposes of this section a company is a foreign held company in an accounting period if—
- (a) at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period, or
  - (b) throughout the accounting period the company is wholly owned by another company and at each given time in the accounting period at least 80 per cent. of that other company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period.
- (11) For the purposes of this section a company wholly owns another company if the first company is the beneficial owner of all the share capital of the second company.
- (12) For the purposes of this section the question whether a person owns a particular percentage of a company's share capital at a particular time shall be determined by—
- (a) assuming that a general meeting of the company is held at that time;
  - (b) taking the number of votes carried by the company's share capital and capable of being cast at such a meeting;
  - (c) taking the number of those votes capable of being so cast by the person concerned by virtue of the company's share capital beneficially owned by him;
  - (d) expressing the number found under paragraph (c) above as a percentage of the number found under paragraph (b) above;
  - (e) taking the percentage found under paragraph (d) above as the percentage of the company's share capital owned by that person at that time.
- (13) Subsection (12) above shall not apply for the purposes of subsection (7) above; and in subsection (7) references to ownership shall be construed as references to beneficial ownership.

#### **Liability to pay ACT displaced.**

246(II) This section applies where—

- (a) a company pays a foreign income dividend in an accounting period, and
  - (b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).
- (2) The company shall not be liable to pay advance corporation tax in respect of the dividend.
- (3) This section shall have effect subject to section 246V.

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### **Settlement of liability by IHC as to ACT.**

246(U) This section applies where—

- (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
  - (b) the company is an international headquarters company in the accounting period.
- (2) If amount A exceeds amount B, the company shall be liable to pay an amount equal to the excess as if the amount were advance corporation tax payable in respect of a distribution made by the company in the last return period falling within the accounting period; and “return period” here has the same meaning as in Schedule 13.
  - (3) If amount B exceeds amount A, an amount equal to the excess shall be paid to the company in accordance with this section; and the payment shall be treated as if it were a repayment of advance corporation tax which—
    - (a) was paid by the company in respect of distributions made by it in the accounting period, and
    - (b) falls to be repaid under sections 246N and 246Q.
  - (4) Amount A is the total amount of the advance corporation tax which by virtue of section 246T and paragraph 3A of Schedule 13 the company is not liable to pay, and has not paid, in respect of dividends paid by it in the accounting period.
  - (5) Amount B is the amount (if any) of the advance corporation tax which would be required to be repaid, or set off, or partly repaid and partly set off, under sections 246N and 246Q if the company—
    - (a) had not treated itself as an international headquarters company at any time in the accounting period, and
    - (b) had, at the expiry of nine months from the end of the accounting period, made a claim as regards the accounting period in accordance with sections 246N and 246Q.
  - (6) Where an amount of advance corporation tax actually paid by the company in respect of qualifying distributions made by it in the accounting period has been dealt with under section 239(3), or the benefit of such an amount has been surrendered under section 240, in applying section 246N(5)(c) and (d) by virtue of subsection (5) above it shall be assumed that an equivalent amount of advance corporation tax would have been so dealt with or (as the case may be) that the benefit of an equivalent amount of advance corporation tax would have been so surrendered.
  - (7) No amount shall be paid under subsection (3) above unless the company makes a claim for payment; and—
    - (a) a return made by the company for the accounting period under section 11 of the Management Act, or
    - (b) an amendment of such a return,
 shall be treated as a claim for payment if the return or (as the case may be) the amendment contains such particulars as the inspector may require.

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- (8) A claim which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.
- (9) No amount shall be payable under subsection (3) above until the expiry of nine months from the end of the accounting period.

#### **Settlement of liability by non-IHC as to ACT.**

246W(1) This section applies where—

- (a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and
  - (b) the company is not an international headquarters company in the accounting period.
- (2) Section 246T shall not apply, and shall be treated as never having applied, as regards the dividend.
  - (3) Sections 246N and 246Q shall apply as if the company had not treated itself as an international headquarters company at any time in the period by virtue of section 246S(9).

#### **Payments and repayments where further matching takes place.**

246W(1) Subsection (2) below applies where—

- (a) a company pays an amount under section 246U(2) as regards an accounting period,
  - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and
  - (c) had the election been made before the relevant time, the company would not have been required to pay some or all of the amount mentioned in paragraph (a) above.
- (2) The company shall be entitled to repayment of so much of the amount mentioned in subsection (1)(a) above as it would not have been required to pay if the election had been made before the relevant time.
  - (3) Subsection (4) below applies where—
    - (a) a company either pays an amount under section 246U(2) as regards an accounting period or is paid an amount under section 246U(3) as regards the period,
    - (b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and
    - (c) had the election been made before the relevant time, the company would have been entitled under section 246U(3) to be paid an amount which was not in fact paid to it.
  - (4) The company shall be entitled to payment of the amount mentioned in subsection (3)(c) above.

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- (5) Any repayment under subsection (2) above shall (without prejudice to section 246U(2)) be treated as if it were a repayment of advance corporation tax which—
- (a) was paid by the company in respect of a distribution made by it in the last return period falling within the accounting period mentioned in subsection (1) above, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (6) In relation to a repayment under subsection (2) above which by virtue of subsection (5) above is treated as a repayment of advance corporation tax, the material date for the purposes of section 826 shall be the date when advance corporation tax in respect of distributions made by the company in the return period mentioned in subsection (5) above became (or, as the case may be, would have become) due and payable; and accordingly subsection (2A) of section 826 shall not apply in relation to the repayment.
- (7) Any payment under subsection (4) above shall be treated as if it were a repayment of advance corporation tax which—
- (a) was paid by the company in respect of distributions made by it in the accounting period mentioned in subsection (3) above, and
  - (b) falls to be repaid under sections 246N and 246Q.
- (8) Subsections (7) and (8) of section 246U shall apply in relation to payments and repayments under this section as they apply in relation to payments under section 246U(3).
- (9) For the purposes of this section—
- (a) “the relevant time” means the expiry of nine months from the end of the accounting period mentioned in subsection (1) or (3) above;
  - (b) “return period” has the same meaning as in Schedule 13.

### *Adjustments*

#### **Adjustments where profits or foreign tax altered.**

- 246X~~L~~) This section applies where a company is paid or repaid an amount under any provision of this Chapter, or sets off under any such provision an amount against a liability of the company to corporation tax, and either—
- (a) there is any alteration of the profits of a company for an accounting period which renders the payment or repayment, or the amount set off, excessive or insufficient, or
  - (b) there is any alteration of an amount of tax payable under the laws of a territory outside the United Kingdom which renders the payment or repayment, or the amount set off, excessive or insufficient.
- (2) Where there is any such alteration as is mentioned in subsection (1) above the company may revise any election made under section 246J or 246K or 246P in such manner as is just and reasonable having regard to the alteration.
- (3) Where there is any such alteration as is mentioned in subsection (1) above, then such adjustments shall be made of any calculation required by this Chapter as are just and reasonable having regard to the alteration and to any

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revision made under subsection (2) above; and payments or repayments shall be made accordingly.

### *Application of this Chapter*

#### **Application of this Chapter.**

246Y This Chapter shall have effect in relation to—

- (a) any dividend paid on or after 1st July 1994;
- (b) any foreign source profit consisting of income for, or a chargeable gain for, an accounting period beginning on or after 1st July 1993.”

## **PART II**

### LIABILITY FOR AND COLLECTION OF ADVANCE CORPORATION TAX

- 2 In section 14 of the Taxes Act 1988 (advance corporation tax and qualifying distributions) in subsection (3) for the words “section 241” there shall be substituted “sections 241 and 246F”.
- 3 (1) Schedule 13 to the Taxes Act 1988 (collection of advance corporation tax) shall be amended as follows.
- (2) In paragraph 1 (duty to make returns) for sub-paragraph (1) there shall be substituted—
- “(1) A company shall for each of its accounting periods make, in accordance with this Schedule, returns to the collector of—
- (a) the franked payments made and franked investment income received by it in that period,
  - (b) the foreign income dividends paid and foreign income dividends received by it in that period, and
  - (c) the advance corporation tax (if any) payable by it in respect of the franked payments made and foreign income dividends paid by it in that period;
- and references in this Schedule to foreign income dividends shall be construed in accordance with Chapter VA of this Part.”
- (3) In paragraph 1, for sub-paragraph (4) there shall be substituted—
- “(4) Subject to paragraphs 4(2), 4A(2) and 7(3) below, no return need be made under this Schedule by a company for any period in which it has—
- (a) made no franked payments, and
  - (b) paid no foreign income dividends.”
- (4) In paragraph 2 (contents of return) for sub-paragraph (1) there shall be substituted—
- “(1) Subject to paragraphs 7(2), 3A(2) and 9A(2) below, the return made by a company for any return period shall show—
- (a) the amount of the franked payments, if any, made by it in that period,

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- (b) the amount of franked investment income, if any, received by it in that period,
- (c) if any advance corporation tax is payable in respect of the franked payments, the amount thereof,
- (d) the amount of the foreign income dividends, if any, paid by it in that period,
- (e) the amount of the foreign income dividends, if any, received by it in that period, and
- (f) if any advance corporation tax is payable in respect of the foreign income dividends paid, the amount thereof.”

(5) In paragraph 2, after sub-paragraph (4) there shall be inserted—

“(5) For the purposes of paragraph (e) of sub-paragraph (1) above the amount of foreign income dividends received by a company in a return period shall be treated as including the excess, if any, of—

- (a) any amount carried forward under section 246F(3) to the accounting period for which the return is made, and
- (b) any amount of foreign income dividends received by the company in that accounting period but before the beginning of the return period,

over the amount of any foreign income dividends paid by the company in that accounting period but before the beginning of the return period.

(6) For the purposes of paragraph (f) of sub-paragraph (1) above advance corporation tax shall be payable in respect of foreign income dividends paid in a return period if—

- (a) the amount shown under paragraph (d) of that sub-paragraph exceeds the amount shown under paragraph (e) of that sub-paragraph, or
- (b) no amount is shown under paragraph (e) of that sub-paragraph;

and the amount of that tax shall be calculated at the rate of advance corporation tax in force for the financial year in which the return period ends on an amount equal to that excess or, if no amount is shown under sub-paragraph (1)(e) above, to the amount shown under sub-paragraph (1)(d) above.”

(6) In paragraph 3 (payment of tax)—

- (a) in sub-paragraph (1) after the words “franked payments” there shall be inserted “ and foreign income dividends ”, and
- (b) in sub-paragraph (3) after the words “franked payment” there shall be inserted “ or foreign income dividend ”.

(7) After paragraph 3 there shall be inserted—

#### **International headquarters companies**

“3A (1) This paragraph and paragraph 3B below apply where—

- (a) a company pays a foreign income dividend in a return period, and
- (b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).

(2) The return made by the company for the return period—

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- (a) shall state that the company has so treated itself;
  - (b) shall show the basis on which it has so treated itself;
  - (c) shall not include the amount of the dividend in the amount shown under paragraph 2(1)(d) above;
  - (d) shall state separately that the dividend was paid and show its amount.
- (3) The dividend shall be treated for the purposes of section 246F(1) and (2), paragraph 2(5) above and paragraph 4A below as if it had not been paid.
- “3B (1) Without prejudice to paragraph 3 above, if at any time before the end of the accounting period in which the return period mentioned in paragraph 3A(1) above falls the inspector is not satisfied that there was a reasonable basis for the company treating itself as mentioned in paragraph 3A(1) he may make an assessment on the company to the best of his judgment; and any advance corporation tax due under an assessment made by virtue of this sub-paragraph shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if the company had not so treated itself.
- (2) Where an assessment which takes account of the dividend mentioned in paragraph 3A(1) above is made under sub-paragraph (1) above, then, subject to any appeal—
  - (a) the company shall be deemed for the purposes of Chapter VA of this Part not to have treated itself as an international headquarters company by virtue of section 246S(9) at the time it paid the dividend;
  - (b) paragraph 3A(3) above shall not apply to the dividend.
- (3) In a case where—
  - (a) the company is not an international headquarters company in the accounting period in which the return period mentioned in paragraph 3A(1) above falls, and
  - (b) as regards any relevant return period amount X exceeds amount Y, after the end of the accounting period the inspector may make an assessment on the company for an amount of advance corporation tax equal to the excess; and a relevant return period is a return period falling within the accounting period in question.
- (4) For the purposes of sub-paragraph (3) above—
  - (a) amount X is the amount of advance corporation tax which, if the company had not treated itself as an international headquarters company at any time in the accounting period and had made a return for the relevant return period under paragraph 2 above accordingly, would have been payable by the company in respect of the relevant return period under paragraph 2(6) above;
  - (b) amount Y is the aggregate of the amounts mentioned in sub-paragraph (5) below.
- (5) The amounts referred to in sub-paragraph (4)(b) above are—
  - (a) the amount (if any) of advance corporation tax which was in fact payable by the company under paragraph 2(6) above in respect of the relevant return period,

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- (b) any amount of advance corporation tax to which the company has been assessed under sub-paragraph (1) above in respect of that period, and
  - (c) any amount of advance corporation tax to which the company has been assessed under paragraph 3 above in respect of that period and which is attributable to foreign income dividends.
- (6) Any advance corporation tax due under an assessment made by virtue of sub-paragraph (3) above shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if the company had not treated itself as an international headquarters company at any time in the accounting period.”
- (8) In paragraph 4 (receipt of franked investment income after payment of advance corporation tax) in sub-paragraph (2) after the words “any franked payments” there shall be inserted “, or paid any foreign income dividends,”.
- (9) After paragraph 4 there shall be inserted—

**Receipt of foreign income dividends after payment of advance corporation tax**

“4A (1) This paragraph shall have effect where—

- (a) a return has been made of foreign income dividends paid in any return period falling within an accounting period and advance corporation tax has been paid in respect of those dividends, and
  - (b) the company receives foreign income dividends after the end of the return period but before the end of the accounting period.
- (2) The company shall make a return under paragraph 1 above for the return period in which the foreign income dividends are received whether or not it has made any franked payments, or paid any foreign income dividends, in that period, and, subject to sub-paragraphs (3) to (5) below, shall be entitled to repayment of any advance corporation tax paid (and not repaid) in respect of foreign income dividends paid in the accounting period in question.
- (3) If no foreign income dividends were paid by the company in the return period for which a return is made by virtue of sub-paragraph (2) above (the relevant return period), the amount of the repayment shall not exceed the amount which would have been payable under paragraph 2 above as regards the relevant return period if the company—
- (a) had paid in the period foreign income dividends of an amount equal to the foreign income dividends actually received by it in the period and had paid in the period no other foreign income dividends or franked payments, and
  - (b) had received in the period no foreign income dividends or franked investment income.
- (4) If at least one foreign income dividend was paid by the company in the relevant return period and the amount of the foreign income dividends received by it in the period exceeds the amount of the foreign income dividends paid by it in the period, the amount of the repayment shall not exceed the amount which would have been payable under paragraph 2 above as regards the relevant return period if the company—

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- (a) had paid in the period foreign income dividends of an amount equal to the foreign income dividends actually received by it in the period and had paid in the period no other foreign income dividends or franked payments, and
  - (b) had received in the period foreign income dividends of an amount equal to the foreign income dividends actually paid by it in the period and had received in the period no other foreign income dividends or franked investment income.
- (5) If at least one foreign income dividend was paid by the company in the relevant return period and the amount of the foreign income dividends paid by it in the period exceeds the amount of the foreign income dividends received by it in the period, the company shall not be entitled to a repayment under this paragraph as regards the relevant return period.”
- (10) After paragraph 6 there shall be inserted—

**Claims for set-off in respect of foreign income dividends received by a company**

- “6A (1) Where under paragraph 2 or 4A above foreign income dividends received by a company fall to be taken into account in determining—
- (a) whether advance corporation tax is payable or repayable, or
  - (b) the amount of such tax which is payable or repayable,
- the inclusion of the foreign income dividends in the appropriate return shall be treated as a claim by the company to have them so taken into account, and any such claim shall be supported by such evidence as the inspector may reasonably require.
- (2) Paragraph 6 above shall apply in relation to a claim under this paragraph as it applies in relation to a claim under paragraph 5 above.”
- (11) In paragraph 7 (qualifying distributions which are not payments and payments of uncertain nature) in sub-paragraph (3) for the words from “and if” to “that period” there shall be substituted “ and if in that period no franked payment (apart from that distribution or payment) is made and no foreign income dividend is paid ”.
- (12) After paragraph 9 there shall be inserted—

**Manufactured foreign income dividends**

- “9A (1) This paragraph applies in any case where, by virtue of paragraph 2(2) and (6) of Schedule 23A, a company is treated as having paid a foreign income dividend.
- (2) No amount shall be shown under paragraph 2(1)(d) above in respect of the dividend which is treated as having been paid, but the company’s return for the return period in which the dividend is treated as having been paid shall state separately that it was treated as paid and shall show its amount.”
- (13) This paragraph shall have effect in relation to any return period ending after 30th June 1994.

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**PART III**

INSURANCE COMPANIES ETC.

4 In section 431(2) of the Taxes Act 1988 (interpretative provisions relating to insurance companies) the following shall be inserted after the definition of “closing liabilities”—

““foreign income dividends” shall be construed in accordance with Chapter VA of Part VI;”.

5 (1) Section 434 of the Taxes Act 1988 (franked investment income etc.) shall be amended as follows.

<sup>F60</sup>(2) .....

<sup>F60</sup>(3) .....

(4) The following subsections shall be inserted after subsection (3A)—

“(3B) The policy holders’ share of foreign income dividends received in respect of investments held in connection with a company’s life assurance business shall be left out of account in determining, under subsection (7) of section 13, the foreign income dividends forming part of the company’s profits for the purposes of that section.

(3C) The policy holders’ share of any income or chargeable gain arising in respect of investments held in connection with a company’s life assurance business shall be left out of account in ascertaining any foreign source profit of the company for the purposes of Chapter VA of Part VI.

(3D) The policy holders’ share of foreign income dividends received in respect of investments held in connection with a company’s life assurance business shall be left out of account in ascertaining, for the purposes of sections 246F(1) and (3) and Schedule 13, the amount of the foreign income dividends received by the company.”

(5) In subsection (6A) the word “and” at the end of paragraph (a) shall be omitted and after that paragraph there shall be inserted—

“(aa) “the policy holders’ share” of any foreign income dividends is so much of the income they represent as is not the shareholders’ share within the meaning of that section,

(ab) “the policy holders’ share” of any income (other than franked investment income) is so much of that income as is not the shareholders’ share within the meaning of that section,

(ac) “the policy holders’ share” of any chargeable gain is so much of that gain as is equal to the amount that, if the gain were income, would not be the shareholders’ share within the meaning of that section, and”.

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### Textual Amendments

**F60** Sch. 16 para. 5(2)(3) repealed (1.5.1995 with effect in accordance with 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))

- 6 (1) Section 438 of the Taxes Act 1988 (pension business: exemption from tax) shall be amended as follows.
- (2) The following subsection shall be inserted after subsection (3)—
- “(3AA) Subject to subsection (6B) below, the exclusion by section 208 from the charge to corporation tax of foreign income dividends shall not prevent such dividends being taken into account as part of the profits in computing under section 436 income from pension business.”
- (3) In subsection (6) the words from “being” to “that profit,” shall be omitted.
- (4) The following subsections shall be inserted after subsection (6A)—
- “(6B) If for any accounting period there is, apart from this subsection, a profit arising to an insurance company from pension business and computed under section 436, and the company so elects as respects all or any part of the relevant foreign income dividends arising to it in that period, subsection (3AA) above shall not apply to the foreign income dividends to which the election relates.
- (6C) In subsection (6B) above “relevant foreign income dividends” means the shareholders’ share of foreign income dividends within subsection (1) above; and for this purpose “the shareholders’ share” of any foreign income dividends is so much of the income they represent as is the shareholders’ share within the meaning of section 89 of the Finance Act 1989.
- (6D) If in the same accounting period both relevant franked investment income and relevant foreign income dividends arise to the company—
- (a) only one election may be made under subsections (6) and (6B) above;
- (b) the election may be made as regards both relevant franked investment income and relevant foreign income dividends (subject to paragraph (c) below);
- (c) the election may not be made as regards relevant foreign income dividends unless the election is made as regards all the company’s relevant franked investment income arising in the period.
- (6E) Where an election is made under one or both of subsections (6) and (6B) above, the elected amount must not exceed the amount of the profit which (apart from the election) arises to the company for the accounting period from pension business and is computed under section 436; and the elected amount is—
- (a) the amount of franked investment income to which the election relates (where the election is made under subsection (6) alone);
- (b) the amount of the foreign income dividends to which the election relates (where the election is made under subsection (6B) alone);

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- (c) the aggregate amount of the franked investment income and the foreign income dividends to which the election relates (where the election is made under subsections (6) and (6B)).”
- (5) In subsection (7) for “subsection (6) above” there shall be substituted “ this section ”.
- 7 In section 458 of the Taxes Act 1988 (capital redemption business) in subsection (2) (a) after “income of” there shall be inserted “ , and foreign income dividends arising to, ”.
- 8 (1) Section 802 of the Taxes Act 1988 (UK insurance companies trading overseas) shall be amended as follows.
- (2) In subsection (2)(a) after “franked investment income” there shall be inserted “ , foreign income dividends ”.
- (3) The following subsection shall be inserted after subsection (3)—
- “(4) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”
- 9 (1) Section 89 of the <sup>M56</sup>Finance Act 1989 (policy holders’ share of profits) shall be amended as follows.
- (2) In subsection (2) after paragraph (b) there shall be inserted “, and
- (c) the shareholders’ share of any foreign income dividends arising to the company in the period in respect of investments held in connection with the business.”
- (3) The following subsection shall be inserted after subsection (2)—
- “(2A) For the purposes of subsection (2) above—
- (a) “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI;
- (b) the shareholders’ share of any foreign income dividends is so much of the income they represent as is the shareholders’ share.”

#### Marginal Citations

M56 1989 c. 26.

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## PART IV

### OTHER PROVISIONS

#### *Penalties*

- 10 In the first column of the Table in section 98 of the <sup>M57</sup>Taxes Management Act 1970 (penalties for failure to furnish particulars etc.) the following entry shall be inserted after the entry relating to section 234 of the principal Act— “ section 246H; ”.

#### **Marginal Citations**

**M57** 1970 c. 9.

#### *Small companies' relief*

- 11 (1) Section 13 of the Taxes Act 1988 (small companies' relief) shall be amended as follows.
- (2) In subsection (7) (definition of profits for purposes of small companies' relief) after “companies within the group” there shall be inserted “ and with the addition of foreign income dividends arising to the company ”.
- (3) The following subsection shall be inserted after subsection (8)—
- “(8A) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

#### *Expenses of management*

- 12 (1) Section 75 of the Taxes Act 1988 (expenses of management: investment companies) shall be amended as follows.
- (2) In subsection (2) after “franked investment income,” there shall be inserted “ foreign income dividends, ”.
- (3) The following subsection shall be inserted after subsection (5)—
- “(6) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

#### *Group income*

- 13 In section 247 of the Taxes Act 1988 (dividends etc. paid by one member of a group to another) the following subsection shall be inserted after subsection (5)—
- “(5A) Subsections (1) to (3) above shall not apply to foreign income dividends; and “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

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*Mutual business etc.*

- 14 (1) Section 490 of the Taxes Act 1988 (companies carrying on a mutual business or not carrying on a business) shall be amended as follows.
- (2) In subsection (1) after “(including group income)” there shall be inserted “ or out of foreign income dividends ”.
- (3) In subsection (4) after “franked investment income” there shall be inserted “ or foreign income dividends ”.
- (4) The following subsection shall be inserted after subsection (4)—
- “(5) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

*Discretionary trusts*

- 15 In section 687 of the Taxes Act 1988 (payments under discretionary trusts) in subsection (3) the following paragraph shall be inserted after paragraph (aa)—
- “(aaa) the amount of tax at a rate equal to the difference between the lower rate and the rate applicable to trusts on any sum treated, under section 246D(4), as income of the trustees;” and in paragraph (a) of that subsection after “(aa)” there shall be inserted “, (aaa) ”.

*Personal representatives*

- 16 In section 701 of the Taxes Act 1988 (interpretation of Part XVI) in subsection (8) (meaning of aggregate income) before “249(5),” there shall be inserted “ 246D(3), ”.

*Purchase and sale of securities*

- 17 (1) Section 731 of the Taxes Act 1988 (application and interpretation of provisions relating to purchase and sale of securities) shall be amended as follows.
- (2) In subsection (9), in the definition of “interest” the words from “and in applying” to the end of paragraph (b) shall be omitted.
- (3) The following subsections shall be inserted after subsection (9)—
- “(9A) In applying references in the relevant provisions to interest in relation to a qualifying distribution other than a foreign income dividend—
- (a) “gross interest” means the qualifying distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it, and
- (b) “net interest” means the qualifying distribution exclusive of any such tax credit.

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- (9B) In applying references in the relevant provisions to interest in relation to a foreign income dividend paid in circumstances where section 246D(1), (3) or (4) applies—
- (a) “gross interest” means the amount of the income arrived at under section 246D(1) by reference to the dividend, and
  - (b) “net interest” means the dividend.
- (9C) Where a foreign income dividend is paid in circumstances other than those where section 246D(1), (3) or (4) applies—
- (a) in applying section 735(2) in relation to the dividend the words “the gross amount corresponding with” shall be disregarded, and
  - (b) in applying references in the relevant provisions (including section 735(2)) to interest in relation to the dividend “net interest” means the dividend.
- (9D) In this section “foreign income dividend” shall be construed in accordance with Chapter VA of Part VI.”

#### *Manufactured dividends*

- 18 (1) Section 737 of the Taxes Act 1988 (manufactured dividends: treatment of tax deducted) shall be amended as follows.
- (2) In subsection (3) (cases where section 737(1) does not apply) at the end of paragraph (b) there shall be inserted “ or ”, and after that paragraph there shall be inserted the following paragraph—
- “(c) the manufactured dividend is representative of a foreign income dividend.”
- (3) In subsection (6) after the definition of “dividend manufacturing regulations” there shall be inserted the following definition—
- ““foreign income dividend” shall be construed in accordance with Chapter VA of Part VI;”.
- 19 In Schedule 23A to the Taxes Act 1988, in paragraph 2 (manufactured dividends on United Kingdom equities) the following sub-paragraphs shall be inserted after sub-paragraph (5)—
- “(6) In a case where—
    - (a) the dividend of which the manufactured dividend is representative is a foreign income dividend, and
    - (b) the dividend manufacturer is a company resident in the United Kingdom,the manufactured dividend shall, in addition to being treated as mentioned in sub-paragraph (2) above, be treated for all purposes of the Tax Acts as if it were a foreign income dividend; but in such a case the dividend manufacturer shall not by virtue of sub-paragraph (2) above be liable to pay advance corporation tax in respect of the manufactured dividend.
  - (7) In a case where—

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- (a) the dividend of which the manufactured dividend is representative is a foreign income dividend, and
- (b) the dividend manufacturer is not a company resident in the United Kingdom (so that, were the dividend of which the manufactured dividend is representative not a foreign income dividend, section 737 would apply in relation to the dividend manufacturer),

in relation to the recipient and all persons claiming title through or under him the manufactured dividend shall, in addition to being treated as mentioned in sub-paragraph (3)(a) above, be treated as if it were a foreign income dividend.

- (8) In this paragraph “foreign income dividend” shall be construed in accordance with Chapter VA of Part VI.”

*Interest on tax overpaid*

- 20 (1) Section 826 of the Taxes Act 1988 shall be amended as follows.
- (2) In subsection (1) the following paragraph shall be inserted after paragraph (a)—
  - “(aa) a repayment falls to be made under sections 246N and 246Q of advance corporation tax paid by a company in respect of distributions made by it in such an accounting period; or”.
- (3) The following subsection shall be inserted after subsection (2)—
  - “(2A) In relation to advance corporation tax paid by a company in respect of distributions made by it in an accounting period, the material date for the purposes of this section is the date on which corporation tax for that accounting period became (or, as the case may be, would have become) due and payable in accordance with section 10.”

SCHEDULE 17

Section 146.

MINOR CORRECTIONS

- 1 Section 43(1) of the Taxes Act 1988 shall have effect, and be deemed always to have had effect, as if the words “or IV” were omitted.
- 2 (1) Subsection (1) of section 271 of that Act shall have effect, and be deemed always to have had effect, as if—
  - (a) the words “or contract”, wherever they occur, were omitted;
  - (b) in paragraph (b), the words “or the contract was made after that date” were omitted; and
  - (c) in paragraph (c), the words “or, as the case may be, the body with which the contract was made” were omitted.
- (2) Subsection (2) of that section shall have effect, and be deemed always to have had effect, as if paragraph (b) and the word “or” immediately preceding it were omitted.

*Status: Point in time view as at 01/04/1996.*

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- 3 Subsection (6) of section 356D of that Act shall have effect, and be deemed always to have had effect, as if for the words from “in relation” onwards there were substituted “so that, in determining what (if any) part of the amount on which qualifying interest is payable is the part exceeding the limit, interest on a later loan shall be eligible for relief only to the extent that the whole amohele omo ohola amount of the limit has not been used in relation to any earlier loan or loans.”

F614 .....

**Textual Amendments**

**F61** Sch. 17 para. 4 repealed (1.5.1995 with effect in accordance with 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))

- 5 Section 561(2)(c) of that Act shall have effect, and be deemed always to have had effect, as if for “subsection (4)” there were substituted “subsection (6)”.
- 6 Section 576(5) of that Act (in its application as amended by the <sup>M58</sup>Taxation of Chargeable Gains Act 1992) shall have effect, and be deemed always to have had effect, as if after “128(2)” there were inserted “of the 1992 Act”.

**Marginal Citations**

**M58** 1992 c. 12.

- 7 Section 768(6) of that Act (in its application as amended by the <sup>M59</sup>Capital Allowances Act 1990) shall have effect, and be deemed always to have had effect, as if for “section 161(5)” there were substituted “section 161(6)”.

**Marginal Citations**

**M59** 1990 c. 1.

- 8 Sections 842(4) and 843(2) of that Act (in their application as amended by the <sup>M60</sup>Taxation of Chargeable Gains Act 1992) shall have effect, and be deemed always to have had effect, as if, in each case, for “the 1990 Act” there were substituted “the 1992 Act”.

**Marginal Citations**

**M60** 1992 c. 12.

- 9 Paragraph 8(b) of Schedule 11 to that Act (in its application as amended by the <sup>M61</sup>Capital Allowances Act 1990) shall have effect, and be deemed always to have had effect, as if the words “Chapter II of Part I of the 1968 Act or” were omitted.

**Marginal Citations**

**M61** 1990 c. 1.

*Status: Point in time view as at 01/04/1996.*

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## SCHEDULE 18

Section 169.

### INTEREST RATE AND CURRENCY CONTRACTS: INSURANCE AND MUTUAL TRADING COMPANIES

#### *Life assurance business: I minus E*

- 1 (1) Subject to sub-paragraph (2) below, sub-paragraph (3) below applies where—
- (a) a qualifying contract was at any time in an accounting period of an insurance company held by the company for the purposes of any life assurance business carried on by it, and
  - (b) the I minus E basis is applied for the period in respect of that business.
- (2) Where the qualifying contract was held partly for the purposes of the life assurance business and partly for other purposes—
- (a) the profit or loss on the contract for the period shall be apportioned on a just and reasonable basis, and
  - (b) any reference in sub-paragraph (3) below to that profit or loss shall be construed as a reference to so much of it as is referable to the life assurance business.
- (3) Notwithstanding anything in section 159 of this Act—
- (a) no part of the profit or loss on the contract for the period shall be treated for the purposes of the Tax Acts as a profit or loss of a trade or part of a trade, and
  - (b) accordingly, the whole of that profit or loss shall be treated for the purposes of this paragraph as a non-trading profit or loss;
- and any reference in the following provisions of this paragraph to a non-trading profit or loss is a reference to a profit or loss which is treated as a non-trading one by virtue of paragraph (b) above.
- (4) Section 432A of the Taxes Act 1988 (insurance companies: apportionment of income and gains) shall have effect as if—
- (a) any reference to income arising from assets of an insurance company's long term business fund or overseas life assurance fund included a reference to any non-trading profit or loss of an insurance company; and
  - (b) any reference to income arising from or attributable to assets [<sup>F62</sup>linked] to a particular category of business included a reference to any non-trading profit or loss which derives from a qualifying contract which is so linked.
- (5) Section 438 of the Taxes Act 1988 (pension business: exemption from tax) shall have effect as if the reference in subsection (1) to income from investments and deposits of so much of an insurance company's [<sup>F63</sup>long term business fund] as is referable to pension business included a reference to so much of any non-trading profit of such a company as is so referable.
- (6) So much of any non-trading loss of an insurance company as is referable to pension business [<sup>F64</sup>, life reinsurance business] or overseas life assurance business shall not be allowable as a deduction in computing for the purposes of this Chapter the profits or losses of the company; and subsection (5)(a) of section 173 of this Act applies for the purposes of this sub-paragraph as it applies for the purposes of that section.

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- (7) Where, as regards an insurance company and an accounting period, one or more non-trading profits or losses of the company for the period are referable to basic life assurance and general annuity business, subsections (5), (6) and (9) of section 129 and sections 130 and 131 of the <sup>M62</sup>Finance Act 1993 (non-trading exchange gains and losses) shall apply for the purposes of this paragraph as if—
- (a) any reference to any amount or amounts a company is treated as receiving in the period by virtue of section 129 were a reference to the amount or amounts of any non-trading profit or profits which are referable to that class of business,
  - (b) any reference to the amount or amounts of any loss or losses a company is treated as incurring in the period by virtue of that section were a reference to the amount or amounts of any non-trading loss or losses which are so referable, and
  - (c) for subsections (3) to (14) of section 131 there were substituted the following subsection—

“(3) The relievable amount shall be set off for the purposes of corporation tax against income of the accounting period which is referable to basic life assurance and general annuity business; and that income shall be treated as reduced accordingly.”

#### Textual Amendments

- F62** Words in [Sch. 18 para. 1\(4\)\(b\)](#) substituted (1.5.1995 with effect as mentioned in [Sch. 8 para. 57\(1\)](#) of the amending Act) by 1995 c. 4, s. 51, [Sch. 8 Pt. I para. 12\(1\)\(c\)](#) (with [Sch. 8 paras. 55\(2\), 57\(1\)](#))
- F63** Words in [Sch. 18 para. 1\(5\)](#) substituted (1.5.1995 with effect as mentioned in [Sch. 8 para. 57\(1\)](#) of the amending Act) by 1995 c. 4, s. 51, [Sch. 8 Pt. I para. 10\(2\)](#) (with [Sch. 8 paras. 55\(2\), 57\(1\)](#))
- F64** Words in [Sch. 18 para. 1\(6\)](#) inserted (1.5.1995 with effect as mentioned in [Sch. 8 para. 57\(1\)](#) of the amending Act) by 1995 c. 4, s. 51, [Sch. 8 Pt. I para. 10\(3\)](#) (with [Sch. 8 paras. 55\(2\), 57\(1\)](#))

#### Marginal Citations

- M62** 1993 c.34.

VALID FROM 29/04/1996

- <sup>F65</sup>1A (1) Where the I minus E basis is applied for any accounting period in respect of the life assurance business or capital redemption business of any insurance company, this Chapter shall have effect for that period in relation to contracts and options held for the purposes of that business as if the words in subsection (10) of section 150A from “but references” onwards were omitted.
- (2) Expressions used in sub-paragraph (1) above and in Part I of Schedule 11 to the Finance Act 1996 have the same meanings in this paragraph as in that Part of that Schedule.

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#### Textual Amendments

**F65** Sch. 18 paras. 1, 1A and cross-heading substituted for Sch. 18 paras. 1 and 2 (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 79** (with savings etc. in Pt. IV Ch. II (ss. 80-105))

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

**C5** Sch. 18 para. 1A(1) modified (23.3.1999) by S.I. 1999/498, **reg. 14**

### *Life assurance business: Case I of Schedule D*

- 2 (1) Subject to sub-paragraph (2) below, sub-paragraphs (3) and (4) below apply where—
- (a) a qualifying contract was at any time in an accounting period of an insurance company held by the company for the purposes of any life assurance business carried on by it, and
  - (b) the profits of the company in respect of that business are, for the purposes of the Tax Acts, computed in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.
- (2) Where the qualifying contract was held partly for the purposes of the life assurance business and partly for other purposes—
- (a) amounts A and B for the period shall be apportioned on a just and reasonable basis, and
  - (b) any reference in sub-paragraph (3) or (4) below to either of those amounts shall be construed as a reference to so much of it as is referable to the life assurance business.
- (3) Notwithstanding anything in sections 159 and 160 of this Act, amount A for the period shall not—
- (a) under or by virtue of this Chapter be chargeable to corporation tax as profits of the company, or
  - (b) be taken into account as a receipt in computing for the purposes of this Chapter the profits or losses of the company.
- (4) Notwithstanding anything in those sections, amount B for the period shall not—
- (a) be allowable as a deduction in computing for the purposes of this Chapter the profits or losses of the company, or
  - (b) 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.
- (5) Subsection (5)(a) of section 173 of this Act applies for the purposes of this paragraph as it applies for the purposes of that section.

### *Non-life mutual business*

- 3 (1) Subject to sub-paragraph (2) below, sub-paragraph (3) below applies where a qualifying contract was at any time in an accounting period of a mutual trading

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company held by the company for the purposes of any non-life mutual business carried on by it.

- (2) Where the qualifying contract was held partly for the purposes of the non-life mutual business and partly for other purposes—
- (a) the profit or loss on the contract for the period shall be apportioned on a just and reasonable basis, and
  - (b) any reference in sub-paragraph (3) below to that profit or loss shall be construed as a reference to so much of it as is referable to the non-life mutual business.
- (3) Notwithstanding anything in section 159 of this Act—
- (a) no part of the profit or loss on the contract for the period shall be treated for the purposes of the Tax Acts as a profit or loss of a trade or part of a trade, and
  - (b) accordingly, the whole of that profit or loss shall be treated for the purposes of section 160 of this Act as a non-trading profit or loss.

### *Interpretation*

4 In this Schedule—

“the I minus E basis” means the basis commonly so called (under which a company carrying on life assurance business is charged to tax on that business otherwise than under Case I of Schedule D);

<sup>F66</sup>  
...

“non-life mutual business” means any mutual trading, or any mutual insurance or other mutual business, which (in either case) is not life assurance business.

[<sup>F67</sup>and other expressions have the same meaning as in Chapter I of Part XII of the Taxes Act 1988.]

#### **Textual Amendments**

**F66** Definition of “life assurance business” in Sch. 18 para. 4 omitted (1.5.1995 with effect as mentioned in Sch. 8 para. 57(1) of the amending Act) by virtue of 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 10(4)** (with Sch. 8 paras. 55(2), 57(1))

**F67** Words in Sch. 18 para. 4 inserted (1.5.1995 with effect as mentioned in Sch. 8 para. 57(1) of the amending Act) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 10(4)** (with Sch. 8 paras. 55(2), 57(1))

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## SCHEDULE 19

Section 196.

### MANAGEMENT: OTHER AMENDMENTS

#### PART I

#### AMENDMENTS OF MANAGEMENT ACT

##### *Notice of liability to income tax and capital gains tax*

- 1 (1) For section 7 of the Management Act there shall be substituted the following section—

##### **“7 Notice of liability to income tax and capital gains tax.**

- (1) Every person who—
- (a) is chargeable to income tax or capital gains tax for any year of assessment, and
  - (b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains,
- shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.
- (2) In the case of a person who is chargeable as mentioned in subsection (1) above as a trustee of a settlement, that subsection shall have effect as if the reference to a notice under section 8 of this Act were a reference to a notice under section 8A of this Act.
- (3) A person shall not be required to give notice under subsection (1) above in respect of a year of assessment if for that year his total income consists of income from sources falling within subsections (4) to (7) below and he has no chargeable gains.
- (4) A source of income falls within this subsection in relation to a year of assessment if—
- (a) all payments of, or on account of, income from it during that year, and
  - (b) all income from it for that year which does not consist of payments, have or has been taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (5) A source of income falls within this subsection in relation to any person and any year of assessment if all income from it for that year has been or will be taken into account—
- (a) in determining that person’s liability to tax, or
  - (b) in the making of deductions or repayments of tax under section 203 of the principal Act.
- (6) A source of income falls within this subsection in relation to any person and any year of assessment if all income from it for that year is—
- (a) income from which income tax has been deducted;

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- (b) income from or on which income tax is treated as having been deducted or paid; or
  - (c) income chargeable under Schedule F,and that person is not for that year liable to tax at a rate other than the basic rate or the lower rate.
- (7) A source of income falls within this subsection in relation to any person and any year of assessment if all income from it for that year is income from which he could not become liable to tax under a self-assessment made under section 9 of this Act in respect of that year.
- (8) If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of the tax—
  - (a) in which he is assessed under section 9 or 29 of this Act in respect of that year, and
  - (b) which is not paid on or before the 31st January next following that year.”
- (2) This paragraph has effect as respects the year 1995-96 and subsequent years of assessment.

#### *European Economic Interest Groupings*

- 2 In subsection (2) of section 12A of the Management Act (European Economic Interest Groupings), for the words “making assessments to income tax, corporation tax and capital gains tax on members of a grouping” there shall be substituted the words “securing that members of a grouping are assessed to income tax and capital gains tax or (as the case may be) corporation tax”.

#### *Records for purposes of returns*

- 3 After section 12A of the Management Act there shall be inserted the following section—

#### *“ Records*

### **12B Records to be kept for purposes of returns.**

- (1) Any person who may be required by a notice under section 8, 8A, 11 or 12AA of this Act (or under any of those sections as extended by section 12 of this Act) to make and deliver a return for a year of assessment or other period shall—
  - (a) keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period; and
  - (b) preserve those records until the end of whichever of the following is the later, namely—
    - (i) the day mentioned in subsection (2) below; and
    - (ii) where a return delivered by him is enquired into by an officer of the Board, the day on which, by virtue of section 28A(5) or 28B(5) of this Act, the officer’s enquiries are treated as completed.

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- (2) The day referred to in subsection (1) above is—
- (a) in the case of a person carrying on a trade, profession or business alone or in partnership or a company, the fifth anniversary of the 31st January next following the year of assessment or (as the case may be) the sixth anniversary of the end of the period;
  - (b) in any other case, the first anniversary of the 31st January next following the year of assessment or, where a return is delivered by the person concerned after that date, the quarter day next following the first anniversary of the day on which the return is delivered;
- and the quarter days for the purposes of this subsection are 31st January, 30th April, 31st July and 31st October.
- (3) In the case of a person carrying on a trade, profession or business alone or in partnership—
- (a) the records required to be kept and preserved under subsection (1) above shall include records of the following, namely—
    - (i) all amounts received and expended in the course of the trade, profession or business and the matters in respect of which the receipts and expenditure take place, and
    - (ii) in the case of a trade involving dealing in goods, all sales and purchases of goods made in the course of the trade; and
  - (b) the duty under that subsection shall include a duty to preserve until the day mentioned in subsection (2) above all supporting documents relating to such items as are mentioned in paragraph (a)(i) or (ii) above.
- (4) The duty under subsection (1) above to preserve records may be discharged by the preservation of the information contained in them; and where information is so preserved a copy of any document forming part of the records shall be admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (5) Any person who fails to comply with subsection (1) above in relation to a year of assessment or accounting period shall be liable to a penalty not exceeding £3,000.
- (6) For the purposes of this section—
- (a) a person engaged in the letting of property shall be treated as carrying on a trade; and
  - (b) “supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”

*Recovery of overpayment of tax etc.*

- 4 (1) After subsection (1A) of section 30 of the Management Act (recovery of overpayment of tax etc.) there shall be inserted the following subsection—
- “(1B) Subsections (2) to (8) of section 29 of this Act shall apply in relation to an assessment under subsection (1) above as they apply in relation to an assessment under subsection (1) of that section; and subsection (4) of that section as so applied shall have effect as if the reference to the loss of tax

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were a reference to the repayment of the amount of tax which ought not to have been repaid.”

- (2) For subsection (5) of that section there shall be substituted the following subsection—

“(5) An assessment under this section shall not be out of time under section 34 of this Act if it is made before the end of whichever of the following ends the later, namely—

- (a) the chargeable period following that in which the amount assessed was repaid or paid as the case may be, or
- (b) where a return delivered by the person concerned, or an amendment of such a return, is enquired into by an officer of the Board, the period ending with the day on which, by virtue of section 28A(5) of this Act, the officer’s enquiries are treated as completed.”

*Assessing procedure*

- 5 (1) After section 30 of the Management Act there shall be inserted the following section—

**“30A Assessing procedure.**

- (1) Except as otherwise provided, all assessments to tax which are not self-assessments shall be made by an officer of the Board.
  - (2) All income tax which falls to be charged by an assessment which is not a self-assessment may, notwithstanding that it was chargeable under more than one Schedule, be included in one assessment.
  - (3) Notice of any such assessment shall be served on the person assessed and shall state the date on which it is issued and the time within which any appeal against the assessment may be made.
  - (4) After the notice of any such assessment has been served on the person assessed, the assessment shall not be altered except in accordance with the express provisions of the Taxes Acts.
  - (5) Assessments to tax which under any provision in the Taxes Acts are to be made by the Board shall be made in accordance with this section.”
- (2) This paragraph, 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.

*Amendment of partnership statement where loss of tax discovered*

- 6 After section 30A of the Management Act there shall be inserted the following section—

**“30B Amendment of partnership statement where loss of tax discovered.**

- (1) Where an officer of the Board or the Board discover, as regards a partnership statement made by any person (the representative partner) in respect of any period—

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- (a) that any profits which ought to have been included in the statement have not been so included, or
  - (b) that an amount of profits so included is or has become insufficient, or
  - (c) that any relief claimed by the representative partner is or has become excessive,
- the officer or, as the case may be, the Board may, subject to subsections (3) and (4) below, by notice to that partner so amend the statement as to make good the omission or deficiency or eliminate the excess.
- (2) Where a partnership statement is amended under subsection (1) above, the officer shall by notice to each of the relevant 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.
- (3) Where the situation mentioned in subsection (1) above is attributable to an error or mistake as to the basis on which the partnership statement was made, no amendment shall be made under that subsection if that statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.
- (4) No amendment shall be made under subsection (1) above unless one of the two conditions mentioned below is fulfilled.
- (5) The first condition is that the situation mentioned in subsection (1) above is attributable to fraudulent or negligent conduct on the part of—
- (a) the representative partner or a person acting on his behalf, or
  - (b) a relevant partner or a person acting on behalf of such a partner.
- (6) 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 representative partner's return under section 12AA of this Act; or
  - (b) informed that partner 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.
- (7) Subsections (6) and (7) of section 29 of this Act apply for the purposes of subsection (6) above as they apply for the purposes of subsection (5) of that section; and those subsections as so applied shall have effect as if—
- (a) any reference to the taxpayer were a reference to the representative partner;
  - (b) any reference to the taxpayer's return under section 8, 8A or 11 were a reference to the representative partner's return under section 12AA of this Act; and
  - (c) sub-paragraph (ii) of paragraph (a) of subsection (7) were omitted.
- (8) An objection to the making of an amendment under subsection (1) above on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the amendment.
- (9) In this section—
- “profits” has the same meaning as in section 29 of this Act;

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“relevant partner” means a person who was a partner at any time during the period in respect of which the partnership statement was made.

- (10) Any reference in this section to the representative partner includes, unless the context otherwise requires, a reference to any successor of his.”

#### *Right of appeal*

- 7 For subsections (1) to (3) of section 31 of the Management Act (right of appeal) there shall be substituted the following subsections—

- “(1) Subject to subsection (1A) below, an appeal may be brought against—
- (a) an amendment under section 28A(2) or (4) of this Act of a self-assessment, or
  - (b) an amendment under section 28B(3) or 30B(1) of this Act of a partnership statement, or
  - (c) an assessment to tax which is not a self-assessment,
- by a notice of appeal in writing given within 30 days after the date on which the notice of amendment or assessment was issued.
- (1A) An appeal against an amendment under subsection (2) of section 28A of this Act of a self-assessment shall not be heard and determined before the officer who made the amendment gives notice under subsection (5) of that section that he has completed his enquiries.
- (2) The notice of appeal shall be given to the officer of the Board by whom the notice of amendment or assessment was given.
- (3) The appeal shall be to the Special Commissioners if—
- (a) the appeal involves any question of the application of any of [F68sections 660A to 660G or 677 to 682A] and 695 to 702 of the principal Act, or
  - (b) in the case of an appeal against an assessment, the assessment was made by the Board.”

#### **Textual Amendments**

**F68** Sch. 19 para. 7: Words in the s. 31(3) proposed to be substituted in 1970 c. 9 substituted (1.5.1995 with effect as mentioned in s. 74(2) of the amending Act) by 1995 c. 4, s. 74, Sch. 17 para. 22

#### *Error or mistake*

- 8 (1) In subsection (1) of section 33 of the Management Act (error or mistake)—
- (a) after the words “an assessment” there shall be inserted the words “(whether under section 9 or 11AA of this Act or otherwise)”; and
  - (b) for the words from “six years” to “made” there shall be substituted the words—

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- “(a) in the case of an assessment to income tax or capital gains tax, five years after the 31st January next following the year of assessment to which the return relates; and
- (b) in the case of an assessment to corporation tax, six years after the end of the accounting period to which the return relates.”.
- (2) The proviso to subsection (2) of that section shall cease to have effect and after that subsection there shall be inserted the following subsection—
- “(2A) No relief shall be given under this section in respect of—
- (a) an error or mistake as to the basis on which the liability of the claimant ought to have been computed where the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made; or
- (b) an error or mistake in a claim which is included in the return.”
- 9 After section 33 of the Management Act there shall be inserted the following section—

**“33A Error or mistake in partnership statement.**

- (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership, those persons allege that the tax charged by self-assessments of theirs under section 9 or 11AA of this Act was excessive by reason of some error or mistake in a partnership statement.
- (2) One of those persons (the representative partner) may, not later than five years after the filing date, by notice in writing make a claim to the Board for relief.
- (3) On receiving the claim the Board shall inquire into the matter and shall, subject to subsection (5) below, so amend the partnership statement so as to give such relief in respect of the error or mistake as is reasonable or just.
- (4) Where a partnership statement is amended under subsection (3) above, the Board shall by notice to each of the relevant partners so amend their self-assessments under section 9 or 11AA of this Act as to give effect to the amendment of the partnership statement.
- (5) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the partners ought to have been computed where the partnership statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.
- (6) In determining the claim the Board—
- (a) shall have regard to all the relevant circumstances of the case, and
- (b) in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of any of the partners;

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and for the purposes of this subsection the Board may take into consideration the liability of the partners and their self-assessments in respect of chargeable periods other than that to which the claim relates.

- (7) If any appeal is brought from the decision of the Board on the claim, the Special Commissioners shall hear and determine the appeal in accordance with the principles to be followed by the Board in determining claims under this section.
- (8) Neither the representative partner nor the Board shall be entitled to require a case to be stated under section 56 of this Act otherwise than on a point of law arising in connection with the computation of profits.
- (9) In this section—  
“filing date” has the same meaning as in section 12AC of this Act;  
“profits” has the same meaning as in section 33 of this Act;  
“relevant partner” means a person who was a partner at any time during the period in respect of which the partnership statement was made.
- (10) Any reference in this section to the representative partner includes, unless the context otherwise requires, a reference to any successor of his.”

#### *Time limits for assessments*

- 10 In subsection (1) of section 34 of the Management Act (ordinary time limit of six years), for the words from “six years” to the end there shall be substituted the words—
- “(a) in the case of an assessment to income tax or capital gains tax, five years after the 31st January next following the year of assessment to which it relates; and  
(b) in the case of an assessment to corporation tax, six years after the end of the accounting period to which it relates.”
- 11 (1) In subsection (1) of section 36 of the Management Act (fraudulent or negligent conduct), for the words from “twenty years” to the end there shall be substituted the words—
- “(a) in the case of an assessment to income tax or capital gains tax, twenty years after the 31st January next following the year of assessment to which it relates; and  
(b) in the case of an assessment to corporation tax, twenty-one years after the end of the accounting period to which it relates.”
- (2) For subsection (2) of that section there shall be substituted the following subsection—
- “(2) Where the person in default carried on a trade, profession or business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the trade, profession or business for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or any of his partners.”

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- 12 In subsections (1) and (2) of section 40 of the Management Act (assessments on personal representatives), for the words “the third year next following the year of assessment” there shall be substituted the words “ the period of three years beginning with the 31st January next following the year of assessment ”.

*Claims etc.*

- 13 For section 42 of the Management Act there shall be substituted the following section—

**“42 Procedure for making claims etc.**

- (1) Where any provision of the Taxes Acts provides for relief to be given, or any other thing to be done, on the making of a claim, this section shall, unless otherwise provided, have effect in relation to the claim.
- (2) Subject to subsection (3) below, where notice has been given under section 8, 8A, 11 or 12AA of this Act, a claim shall not at any time be made otherwise than by being included in a return under that section if it could, at that or any subsequent time, be made by being so included.
- (3) Subsection (2) above shall not apply in relation to any claim which falls to be taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (4) A claim made by a company for payment of a tax credit shall be made by being included in a return under section 11 of this Act.
- (5) The references in subsections (2) and (4) above to a claim being included in a return include references to a claim being so included by virtue of an amendment of the return; and the reference in subsection (4) above to a claim for payment includes a reference to a claim resulting in payment.
- (6) In the case of a trade, profession or business carried on by persons in partnership, a claim under any of the provisions mentioned in subsection (7) below shall be made—
  - (a) where subsection (2) above applies, by being included in a return under section 12AA of this Act, and
  - (b) in any other case, by such one of those persons as may be nominated by them for the purpose.
- (7) The provisions are—
  - (a) sections 84, 91B, 101(2), 120(2), 401, 471, 472, 484, 504, 531, 534, 535, 537A, 538, 570, 571(4), 579(4), 723(3), 732(4), 810 of, and paragraphs 2, 6 and 11 of Schedule 5 to, the principal Act;
  - (b) section 43(5) of the Finance Act 1989;
  - (c) sections 1, 11, 17, 22, 23, 24, 25, 30, 31, 33, 37, 48, 49, 53, 55, 68(5), 68(9), 77, 78, 124A, 129(2), 140(3), 141 and 158 of the Capital Allowances Act 1990; and
  - (d) sections 41 and 42 of the Finance (No. 2) Act 1992.
- (8) A claim may be made on behalf of an incapacitated person by his trustee, guardian, tutor or curator; and a person who under Part VIII of this Act has

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been charged with tax on the profits of another person may make any such claim for relief by discharge or repayment of that tax.

- (9) Where a claim has been made (whether by being included in a return under section 8, 8A, 11 or 12AA of this Act or otherwise) and the claimant subsequently discovers that an error or mistake has been made in the claim, the claimant may make a supplementary claim within the time allowed for making the original claim.
- (10) This section shall apply in relation to any elections and notices as it applies in relation to claims.
- (11) Schedule 1A to this Act shall apply as respects any claim, election or notice which—
- (a) is made otherwise than by being included in a return under section 8, 8A, 11 or 12AA of this Act, and
  - (b) does not fall to be taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (12) Schedule 2 to this Act shall have effect as respects the Commissioners to whom an appeal lies under Schedule 1A to this Act.
- (13) 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.”
- 14 In subsection (1) of section 43 of the Management Act (time limit for making claims), for the words from “within six years” to the end there shall be substituted the words—
- “(a) in the case of a claim with respect to income tax or capital gains tax, within five years from the 31st January next following the year of assessment to which it relates; and
  - (b) in the case of a claim with respect to corporation tax, within six years from the end of the accounting period to which it relates.”
- 15 (1) In subsection (1) of section 43A of the Management Act (further assessments: claims etc.), for the words “section 29(3) of this Act” there shall be substituted the words “section 29 of this Act”.
- (2) This paragraph, 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.

#### *Determination of Commissioners*

- 16 In subsection (2) of section 46 of the Management Act (determination of Commissioners), after the words [F69“section 56B of this Act”] there shall be inserted the words “and in particular save as provided by section 29 of this Act”.

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### Textual Amendments

**F69** Words in [Sch. 19 para. 16](#) substituted (1.9.1994) by [S.I. 1994/1813, reg. 2\(1\)](#), [Sch. 1 para. 25\(a\)](#)

### *Procedure on appeal*

17 (1) For subsections (6) and (7) of section 50 of the Management Act (procedure on appeal) there shall be substituted the following subsections—

“(6) If, on an appeal, it appears to the majority of the Commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other <sup>F70</sup> . . . evidence—

- (a) that, by reason of an amendment under section 28A(2) or (4) of this Act, the appellant is overcharged by a self-assessment;
- (b) that, by reason of an amendment under section 28B(3) or 30B(1) of this Act, any amounts contained in a partnership statement are excessive; or
- (c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal, it appears to the Commissioners—

- (a) that the appellant is undercharged to tax by a self-assessment which has been amended under section 28A(2) or (4) of this Act;
- (b) that any amounts contained in a partnership statement which has been amended under section 28B(3) or 30B(1) of this Act are insufficient; or
- (c) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment or amounts shall be increased accordingly.”

(2) In subsection (8) of that section, after the words “an assessment” there shall be inserted the words “(other than a self-assessment)”.

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

“(9) Where any amounts contained in a partnership statement are reduced under subsection (6) above or increased under subsection (7) above, an officer of the Board 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 reductions or increases of those amounts.”

### Textual Amendments

**F70** Word in [Sch. 19 para. 17\(1\)](#) repealed (1.9.1994) by [S.I. 1994/1813, reg. 2](#), [Sch. 1 para. 25\(b\)](#), [Sch. 2 Pt. I](#)

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*Postponement of tax pending appeal*

- 18 (1) For subsection (1) of section 55 of the Management Act there shall be substituted the following subsection—
- “(1) This section applies to an appeal to the Commissioners against—
- (a) an amendment made under section 28A(2) or (4) of this Act of a self-assessment,
  - (b) an assessment to tax made under section 29 of this Act,
  - (c) an assessment to income tax made under Schedule 16 to the principal Act (income tax on company payments) other than an assessment charging tax the time for the payment of which is given by paragraph 4(1) or 9 of that Schedule, or
  - (d) a notice under subsection (1) or (3) of section 753 of that Act where, before the appeal is determined, the appellant is assessed to tax under section 747(4)(a) of that Act by reference to an amount of chargeable profits specified in that notice.”
- (2) In the following provisions of that section, for the word “assessment”, in each place where it occurs, there shall be substituted the words “ amendment or assessment ”.

*Collection and recovery*

- 19 (1) In subsection (1) of section 65 of the Management Act (magistrates’ courts), for paragraphs (a) and (b) and the words “the tax” immediately following those paragraphs there shall be substituted the words “the amount of—
- (a) any payment on account for the time being due and payable under section 59A of this Act, or
  - (b) any income tax and capital gains tax for the time being due and payable under any assessment (whether under section 9 of this Act or otherwise),
- does not exceed £2,000, the payment or tax ”.
- (2) In subsection (3) of that section, for the words “any tax charged under Schedule E” there shall be substituted the following paragraphs—
- “(a) any such payment as is mentioned in subsection (1)(a) above, or
  - (b) any income tax for the time being due and payable under any assessment under section 9 of this Act,”.
- 20 In section 69 of the Management Act (collection of interest on tax)—
- (a) for the words “Interest charged under Part IX of this Act” there shall be substituted the words “ A penalty imposed under Part II, VA or X of this Act, a surcharge imposed under Part VA of this Act and interest charged under Part IX of this Act ”; and
  - (b) for the words “if it is interest on tax” there shall be substituted the words “ if it is a penalty or surcharge imposed in respect of, or if it is interest on, tax ”.
- 21 (1) In subsection (2) of section 70 of the Management Act (evidence), for the words “that interest is payable” to “ another collector ” there shall be substituted the words—

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- “(a) that a penalty is payable under Part II, VA or X of this Act, that a surcharge is payable under Part VA of this Act or that interest is payable under Part IX of this Act, and
- (b) that payment of the penalty, surcharge or interest has not been made to him or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector.”
- (2) Subsection (3) of that section shall cease to have effect.
- 22 (1) After section 70 of the Management Act there shall be inserted the following section—

**“70A Payments by cheque.**

- (1) For the purposes of this Act and the provisions mentioned in subsection (2) below, where—
- (a) any payment to an officer of the Board or the Board is made by cheque, and
- (b) the cheque is paid on its first presentation to the banker on whom it is drawn,
- the payment shall be treated as made on the day on which the cheque was received by the officer or the Board.
- (2) The provisions are—
- (a) sections 824 to 826 of the principal Act (repayment supplements and interest on tax overpaid); and
- (b) section 283 of the 1992 Act (repayment supplements).”
- (2) This paragraph has effect as respects cheques received on or after 6th April 1996.

*Interest on overdue tax or tax recovered*

- 23 (1) For section 86 of the Management Act there shall be substituted the following section—

**“86 Interest on overdue income tax and capital gains tax.**

- (1) The following, namely—
- (a) any amount on account of income tax which on any date becomes due and payable in accordance with section 59A of this Act, and
- (b) any income tax or capital gains tax which on any date becomes due and payable in accordance with section 59B(3) or (4) of this Act,
- shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from that date until payment.
- (2) Any income tax or capital gains tax which becomes due and payable in accordance with section 55 or section 59B(5) or (6) of this Act shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the relevant date until payment; and in this subsection “the relevant date” means the date mentioned in section 59B(3) or (4) of this Act.

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- (3) Subsections (1) and (2) above apply even if the date there mentioned is a non-business day within the meaning of section 93 of the Bills of Exchange Act 1882.
- (4) Where as regards a year of assessment—
- (a) any person makes a claim under subsection (3) or (4) of section 59A of this Act in respect of both of the amounts (the section 59A amounts) payable by him in accordance with that section, and
  - (b) an amount (the section 59B amount) becomes payable by him in accordance with section 59B of this Act, or would become so payable but for one or more payments on account made otherwise than under section 59A of this Act,
- interest shall be payable under this section as if each of the section 59A amounts had been equal to the aggregate of that amount and 50 per cent. of the section 59B amount, or the amount given by section 59A(2) of this Act, whichever is the less.
- (5) Where subsection (4) above applies as regards a year of assessment, so much (if any) of 50 per cent. of the section 59B amount as does not affect the amount of interest payable on either of the section 59A amounts shall be added to 50 per cent. of the section 59B amount for the purpose of determining the amount of interest payable on the other of those amounts.
- (6) Where as regards a year of assessment—
- (a) any person makes a claim under subsection (3) or (4) of section 59A of this Act in respect of one of the amounts (the section 59A amount) payable by him in accordance with that section, and
  - (b) an amount (the section 59B amount) becomes payable by him in accordance with section 59B of this Act, or would become so payable but for one or more payments on account made otherwise than under section 59A of this Act,
- interest shall be payable under this section as if the section 59A amount had been equal to the aggregate of that amount and the section 59B amount, or the amount given by section 59A(2) of this Act, whichever is the less.
- (7) Where as regards a year of assessment—
- (a) two amounts (the section 59A amounts) become payable by any person in accordance with section 59A of this Act, and
  - (b) an amount (the section 59B amount) subsequently becomes repayable to him in accordance with section 59B of this Act,
- so much of any interest payable under this section on either of the section 59A amounts as is not attributable to the amount (if any) by which that amount exceeds 50 per cent. of the section 59B amount shall be remitted.
- (8) Where subsection (7) above applies, so much (if any) of 50 per cent. of the section 59B amount as does not affect the amount of interest remittable as respects either of the 59A amounts shall be added to 50 per cent. of the section 59B amount for the purpose of determining the amount of interest remittable as respects the other of those amounts.
- (9) Where as regards a year of assessment—

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- (a) a single amount (the section 59A amount) becomes payable by any person in accordance with section 59A of this Act, and
  - (b) an amount (the section 59B amount) subsequently becomes repayable to him in accordance with section 59B of this Act,
- so much of any interest payable under this section on the section 59A amount as is not attributable to the amount (if any) by which that amount exceeds the section 59B amount shall be remitted.
- (10) In determining for the purposes of subsections (4) to (9) above the amount which is payable by or repayable to any person in accordance with section 59B of this Act, no account shall be taken of any amount which is payable by him by way of capital gains tax.”
- (2) This paragraph, 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.
- 24 In subsection (1) of section 87A of the Management Act (interest on overdue corporation tax etc.), for the words “section 10 of the principal Act” there shall be substituted the words “ section 59D of this Act ”.

#### *Penalties*

- 25 For section 93 of the Management Act there shall be substituted the following section—

**“93 Failure to make return for income tax and capital gains tax.**

- (1) This section applies where—
  - (a) any person (the taxpayer) has been required by a notice served under or for the purposes of section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act) to deliver any return, and
  - (b) he fails to comply with the notice.
- (2) The taxpayer shall be liable to a penalty which shall be £100.
- (3) If, on an application made to them by an officer of the Board, the General or Special Commissioners so direct, the taxpayer shall be liable to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which he is notified of the direction (but excluding any day for which a penalty under this subsection has already been imposed).
- (4) If—
  - (a) the failure by the taxpayer to comply with the notice continues after the end of the period of six months beginning with the filing date, and
  - (b) no application is made under subsection (3) above before the end of that period,
 the taxpayer shall be liable to a further penalty which shall be £100.
- (5) Without prejudice to any penalties under subsections (2) to (4) above, if—
  - (a) the failure by the taxpayer to comply with the notice continues after the anniversary of the filing date, and

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(b) there would have been a liability to tax shown in the return, the taxpayer shall be liable to a penalty of an amount not exceeding the liability to tax which would have been so shown.

(6) No penalty shall be imposed under subsection (3) above in respect of a failure at any time after the failure has been remedied.

(7) If the taxpayer proves that the liability to tax shown in the return would not have exceeded a particular amount, the penalty under subsection (2) above, together with any penalty under subsection (4) above, shall not exceed that amount.

(8) On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above, neither section 50(6) to (8) nor section 100B(2) of this Act shall 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 delivering the return, set the determination aside; or
- (b) if it does not so appear to them, confirm the determination.

(9) References in this section to a liability to tax which would have been shown in the return are references to an amount which, if a proper return had been delivered on the filing date, would have been payable by the taxpayer under section 59B of this Act for the year of assessment.

(10) In this section—

“the filing date” means the day mentioned in section 8(1A) or, as the case may be, section 8A(1A) of this Act;

“the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered.”

26 After section 93 of the Management Act there shall be inserted the following section—

**“93A Failure to make partnership return.**

(1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership—

- (a) a partner (the representative partner) has been required by a notice served under or for the purposes of section 12AA(2) or (3) of this Act to deliver any return, and
- (b) he fails to comply with the notice.

(2) Each relevant partner shall be liable to a penalty which shall be £100.

(3) If, on an application made to them by an officer of the Board, the General or Special Commissioners so direct, each relevant partner shall be liable, for each day on which the failure continues after the day on which the representative partner is notified of the direction (but excluding any day for which a penalty under this subsection has already been imposed), to a further penalty or penalties not exceeding £60.

(4) If—

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- (a) the failure by the representative partner to comply with the notice continues after the end of the period of six months beginning with the filing date, and
- (b) no application is made under subsection (3) above before the end of that period,
- each relevant partner shall be liable to a further penalty which shall be £100.
- (5) No penalty shall be imposed under subsection (3) above in respect of a failure at any time after the failure has been remedied.
- (6) Where, in respect of the same failure to comply, penalties under subsection (2), (3) or (4) above are determined under section 100 of this Act as regards two or more relevant partners—
- (a) no appeal against the determination of any of those penalties shall be brought otherwise than by the representative partner;
- (b) any appeal by that partner shall be a composite appeal against the determination of each of those penalties; and
- (c) section 100B(3) of this Act shall apply as if that partner were the person liable to each of those penalties.
- (7) On an appeal against a determination under section 100 of this Act of a penalty under subsection (2) or (4) above, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the Commissioners may—
- (a) if it appears to them that, throughout the period of default, the representative partner had a reasonable excuse for not delivering the return, set the determination aside; or
- (b) if it does not so appear to them, confirm the determination.
- (8) In this section—
- “the filing date” means the day specified in the notice under section 12AA(2) or (3) of this Act;
- “the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered;
- “relevant partner” means a person who was a partner at any time during the period in respect of which the return was required.”
- 27 (1) In subsection (1) of section 95 of the Management Act (incorrect return or accounts for income tax or capital gains tax), for the words “section 8 or 8A or 9 of this Act (or any of those sections)” there shall be substituted the words “ section 8 or 8A of this Act (or either of those sections )”.
- (2) In subsection (3) of that section, the words from “and the references” to the end shall cease to have effect.
- 28 After section 95 of the Management Act there shall be inserted the following section—
- “95A Incorrect partnership return or accounts.**
- (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership—
- (a) a partner (the representative partner)—

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- (i) delivers an incorrect return of a kind mentioned in section 12AA of this Act, or
      - (ii) makes any incorrect statement or declaration in connection with such a return, or
      - (iii) submits to an officer of the Board any incorrect accounts in connection with such a return, and
    - (b) either he does so fraudulently or negligently, or his doing so is attributable to fraudulent or negligent conduct on the part of a relevant partner.
  - (2) Each relevant partner shall be liable to a penalty not exceeding the difference between—
    - (a) the amount of income tax or corporation tax payable by him for the relevant period (including any amount of income tax deducted at source and not repayable), and
    - (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts made or submitted by the representative partner had been correct;and in determining each such penalty, regard shall be had only to the fraud or negligence, or the fraudulent or negligent conduct, mentioned in subsection (1(b) above.
  - (3) Where, in respect of the same return, statement, declaration or accounts, penalties under subsection (2) above are determined under section 100 of this Act as regards two or more relevant partners—
    - (a) no appeal against the determination of any of those penalties shall be brought otherwise than by the representative partner;
    - (b) any appeal by that partner shall be a composite appeal against the determination of each of those penalties; and
    - (c) section 100B(3) of this Act shall apply as if that partner were the person liable to each of those penalties.
  - (4) In this section—
    - “relevant partner” means a person who was a partner at any time during the relevant period;
    - “relevant period” means the period in respect of which the return was made.”
- 29 After section 97 of the Management Act there shall be inserted the following section—
- “97AA Failure to produce documents under section 19A.**
- (1) Where a person fails to comply with a notice or requirement under section 19A(2) or (3) of this Act, he shall be liable, subject to subsection (4) below—
    - (a) to a penalty which shall be £50, and
    - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the relevant amount for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding

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any day for which a penalty under this paragraph has already been imposed).

- (2) In subsection (1)(b) above “the relevant amount” means—
- (a) in the case of a determination of a penalty by an officer of the Board under section 100 of this Act, £30;
  - (b) in the case of a determination of a penalty by the Commissioners under section 100C of this Act, £150.
- (3) An officer of the Board authorised by the Board for the purposes of section 100C of this Act may commence proceedings under that section for any penalty under subsection (1)(b) above, notwithstanding that it is not a penalty to which subsection (1) of section 100 of this Act does not apply by virtue of subsection (2) of that section.
- (4) No penalty shall be imposed under subsection (1) above in respect of a failure within that subsection at any time after the failure has been remedied.”

30 (1) For subsection (2) of section 98B of the Management Act (European Economic Interest Groupings) there shall be substituted the following subsections—

“(2) Subsections (2A) to (4) below apply where a grouping or member of a grouping required by a notice given under section 12A of this Act to deliver a return or other document fails to comply with the notice.

(2A) The grouping or member shall be liable to a penalty not exceeding £300 multiplied by the number of members of the grouping at the time of the failure to comply.

(2B) If, on an application made to them by an officer of the Board, the General or Special Commissioners so direct, the grouping or member shall be liable, for each day on which the failure continues after the day on which the grouping or member is notified of the direction (but excluding any day for which a penalty under this subsection has already been imposed), to a further penalty or penalties not exceeding £60 multiplied by the number of members of the grouping at the end of that day.”

(2) In subsection (3) of that section, for the words “subsection (2)” there shall be substituted the words “ subsection (2A) or (2B) ”.

(3) In subsection (4) of that section, for the words “subsection (2)” there shall be substituted the words “ subsections (2A) and (2B) ”.

31 (1) In subsection (1) of section 100B of the Management Act (appeals against penalty determinations), after the words “subject to” there shall be inserted the words “ sections 93, 93A and 95A of this Act ”.

(2) At the beginning of subsection (2) of that section there shall be inserted the words “ Subject to sections 93(8) and 93A(7) of this Act ”.

32 In subsection (2) of section 103 of the Management Act (time limit for penalties), for the words “the end of the chargeable period” there shall be substituted the words “ the 31st January next following the chargeable period ”.

33 After section 103 of the Management Act there shall be inserted the following section—

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### “103A Interest on penalties.

A penalty under any of the provisions of Part II or VA or this Part of this Act shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date on which it becomes due and payable until payment.”

#### *Interpretation*

- 34 (1) In subsection (1) of section 118 of the Management Act (interpretation), after the definition of [F71“the Special Commissioners Regulations”] there shall be inserted the following definitions—
- ““successor”, in relation to a person who has made and delivered a return under section 12AA of this Act, and “predecessor” and “successor”, in relation to the successor of such a person, shall be construed in accordance with section 12AC(6) of this Act;”.
- (2) Subsection (3) of that section (effect of assessments in partnership name) shall cease to have effect.
- (3) Sub-paragraph (2) above, 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.

#### **Textual Amendments**

**F71** Words in [Sch. 19 para.34\(1\)](#) substituted (1.9.1994) by [S.I. 1994/1813, reg. 2\(1\)](#), [Sch. 1 para. 25\(c\)](#)

#### *Claims etc. not included in returns*

- 35 After Schedule 1 to the Management Act there shall be inserted the following Schedule—

#### “SCHEDULE 1A

#### CLAIMS ETC. NOT INCLUDED IN RETURNS

#### *Preliminary*

- 1 In this Schedule—
- “claim” means a claim, election or notice as respects which this Schedule applies;
- “partnership claim” means a claim made in accordance with section 42(6)(b) of this Act;
- “profits” has the same meaning as in section 42 of this Act;
- “relevant partner”, in relation to a partnership claim, means any person who was a partner at any time during the period in respect of which the claim is made;
- “successor”, in relation to a person who—
- (a) has made a partnership claim, but
- (b) is no longer a partner or is otherwise no longer available,

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means such other partner who may at any time be nominated for the purposes of this paragraph by the majority of the partners at that time, and “predecessor” and “successor”, in relation to a person so nominated, shall be construed accordingly.

#### *Making of claims*

- 2 (1) Subject to any provision in the Taxes Acts for a claim to be made to the Board, every claim shall be made to an officer of the Board.
- (2) No claim requiring the repayment of tax shall be made unless the claimant has documentary proof that the tax has been paid by deduction or otherwise.
- (3) A claim shall be made in such form as the Board may determine.
- (4) The form of claim shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim.
- (5) The form of claim may require—
  - (a) a statement of the amount of tax which will be required to be discharged or repaid in order to give effect to the claim;
  - (b) a return of profits to be made in support of the claim; and
  - (c) any such particulars of assets acquired as may be required in a return by virtue of section 12 of this Act.
- (6) In the case of a claim made by or on behalf of a person who is not resident, or who claims to be not resident or not ordinarily resident or not domiciled, in the United Kingdom, an officer of the Board or the Board may require a statement or declaration in support of the claim to be made by affidavit.

#### *Amendments of claims*

- 3 (1) Subject to sub-paragraph (2) below—
  - (a) at any time before the end of the period of nine months beginning with the day on which a claim is made, an officer of the Board may by notice to the claimant so amend the claim 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 day on which the claim is made, the claimant may amend his claim by notice to an officer of the Board.
- (2) No amendment of a claim may be made under sub-paragraph (1) 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 claim, and
  - (b) ending with the day on which the officer’s enquiries into the claim are completed.

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#### *Giving effect to claims and amendments*

- 4 (1) An officer of the Board or the Board shall, as soon as practicable after a claim other than a partnership claim is made, or such a claim is amended under paragraph 3 above, give effect to the claim or amendment by discharge or repayment of tax.
- (2) An officer of the Board or the Board shall, as soon as practicable after a partnership claim is made, or such a claim is amended under paragraph 3 above, give effect to the claim or amendment, as respects each of the relevant partners, by discharge or repayment of tax.

#### *Power to enquire into claims*

- 5 (1) An officer of the Board may enquire into—
  - (a) a claim made by any person, or
  - (b) any amendment made by any person of a claim made by him,if, before the end of the period mentioned in sub-paragraph (2) below, he gives notice in writing of his intention to do so to that person or, in the case of a partnership claim, any successor of that person.
- (2) The period referred to in sub-paragraph (1) above is the period ending with the quarter day next following the first anniversary of the day on which the claim or amendment was made; and the quarter days for the purposes of this subsection are 31st January, 30th April, 31st July and 31st October.
- (3) A claim or amendment which has been enquired into under sub-paragraph (1) above shall not be the subject of a further notice under that sub-paragraph.

#### *Power to call for documents for purposes of enquiries*

- 6 (1) This paragraph applies where an officer of the Board gives notice under paragraph 5 above to any person (the claimant) of his intention to enquire into—
  - (a) a claim made by the claimant, or
  - (b) any amendment made by the claimant of such a claim.
- (2) For the purpose of enquiring into the claim or amendment, the officer may at the same or any subsequent time by notice in writing require the claimant, 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 claimant'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 claim or amendment is incorrect, and
  - (b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.
- (3) Subsections (3) to (11) of section 19A of this Act apply for the purposes of this paragraph as they apply for the purposes of that section; and

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those subsections as so applied shall have effect as if any reference to subsection (2) of that section were a reference to sub-paragraph (2) above.

- (4) Where this paragraph applies in relation to a partnership claim, any reference in this paragraph to the claimant includes a reference to any predecessor or successor of his.

*Amendments of claims where enquiries made*

- 7 (1) This paragraph applies where an officer of the Board gives notice under paragraph 5(1) above to any person (the claimant) of his intention to enquire into—
- (a) a claim made by the claimant, or
  - (b) any amendment made by the claimant of such a claim.
- (2) At any time in the period of 30 days beginning with the day on which the officer's enquiries are completed, the claimant may so amend his claim—
- (a) as to eliminate or make good any excess or deficiency which, on the basis of the conclusions stated in the officer's notice under sub-paragraph (4) below, is an excess or deficiency which could be made good or eliminated under sub-paragraph (3) below; or
  - (b) as to give effect to any amendments to the claim which he has notified to the officer.
- (3) If, at any time in the period of 30 days beginning immediately after the period mentioned in sub-paragraph (2) above, the officer is of opinion that—
- (a) the claimant's claim is excessive or insufficient, and
  - (b) in a case falling within sub-paragraph (1)(b) above, the excess or deficiency is attributable (wholly or partly) to the claimant's amendment,
- the officer may by notice to the claimant so amend the claim as to eliminate or make good the excess or deficiency or, where paragraph (b) above applies, so much of the excess or deficiency as is so attributable.
- (4) Subject to sub-paragraph (5) below, the officer's enquiries shall be treated as completed at such time as he by notice—
- (a) informs the claimant that he has completed his enquiries, and
  - (b) states his conclusions as to the amount which should be the amount of the claimant's claim.
- (5) Subsections (6) and (7) of section 28A of this Act apply for the purposes of sub-paragraph (4) above as they apply for the purposes of subsection (5) of that section.
- (6) Where this paragraph applies in relation to a partnership claim, any reference in this paragraph to the claimant includes a reference to any predecessor or successor of his.

*Giving effect to such amendments*

- 8 (1) An officer of the Board or the Board shall, within 30 days of a claim other than a partnership claim being amended under paragraph 7(2) or (3)

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above, give effect to the amendment by making such adjustment as may be necessary, whether—

- (a) by way of assessment on the claimant, or
  - (b) by discharge of tax or, on proof to the satisfaction of the officer or the Board that any tax has been paid by the claimant by deduction or otherwise, by repayment of tax.
- (2) An officer of the Board or the Board shall, within 30 days of a partnership claim being amended under paragraph 7(2) or (3) above, give effect to the amendment, as respects each of the relevant partners, by making such adjustment as may be necessary, whether—
- (a) by way of assessment on the partner, or
  - (b) by discharge of tax or, on proof to the satisfaction of the officer or the Board that any tax has been paid by the partner by deduction or otherwise, by repayment of tax.
- (3) An assessment made under sub-paragraph (1) or (2) above shall not be out of time if it is made within the time mentioned in that sub-paragraph.

#### *Appeals against such amendments*

- 9 (1) An appeal may be brought against an amendment made under paragraph 7(3) above by giving written notice to the officer within 30 days of the amendment being made.
- (2) Where, in the case of such an appeal, the issues arising include—
- (a) any question arising under section 278 of the principal Act (personal reliefs for non-residents);
  - (b) any question of residence, ordinary residence or domicile; or
  - (c) the question whether a fund is one to which section 615(3) of that Act applies (pension funds for service abroad),
- the time for bringing the appeal shall be three months from the making of the amendment under paragraph 7(3) above.
- (3) On an appeal under this paragraph, the Commissioners may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (4) Where an amendment made under paragraph 7(3) above is varied, whether by the Commissioners or by the order of any court, paragraph 8 above shall (with the necessary modifications) apply in relation to the variation as it applied in relation to the amendment.”

- 36 (1) In paragraph 1 of Schedule 2 to the Management Act (jurisdiction in appeals on claims)—
- (a) in sub-paragraph (1), for the words “the decision of an inspector on a claim” there shall be substituted the words “an amendment of a claim”; and
  - (b) in sub-paragraphs (1A) and (1B), for the words “the inspector or other officer of the Board” there shall be substituted the words “the officer of the Board”.

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- (2) In paragraph 2 of that Schedule, for the words “from a decision of an inspector on a claim”, in both places where they occur, there shall be substituted the words “against an amendment of a claim”.
- (3) For paragraph 3 of that Schedule there shall be substituted the following paragraph—

### **Supplemental**

“3 Any reference in this Schedule to an amendment of a claim is a reference to such an amendment made under paragraph 6(3) of Schedule 1A to this Act.”

## **PART II**

### AMENDMENTS OF TAXES ACT 1988

#### *Time limits for claims under section 96*

- 37 (1) In subsection (8) of section 96 of the Taxes Act 1988 (farming and market gardening: relief for fluctuating profits)—
- (a) for the words “two years after the end of” there shall be substituted the words “twelve months from the 31st January next following”; and
  - (b) for the words “before the end of” there shall be substituted the words “before the 31st January next following”.
- (2) This paragraph 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.

#### *Interest on Schedule E tax*

- 38 In subsection (2)(dd) of section 203 of the Taxes Act 1988 (PAYE), the words from “(being not less” to “due” shall cease to have effect.

#### *Time limits for claims under sections 534 and 537A*

- 39 In subsection (5) of section 534 of the Taxes Act 1988 (relief for copyright payments etc.), for the words from “and such a claim” to the end there shall be substituted the words “and such a claim may be made at any time not later than seven years from the 31st January next following the year of assessment in which the work’s first publication occurs.”
- 40 In subsection (5) of section 537A of the Taxes Act 1988 (relief for payments in respect of designs), for the words from “and such a claim” to “eight years after” there shall be substituted the words “and such a claim may be made at any time not later than seven years from the 31st January next following the year of assessment in which”.

#### *Repayment supplements: income tax*

- 41 (1) For subsection (1) of section 824 of the Taxes Act 1988 (repayment supplements: individuals and others) there shall be substituted the following subsection—

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“(1) Subject to the following provisions of this section, a repayment made by the Board or an officer of the Board of any of the following, namely—

- (a) an amount paid on account of income tax under section 59A of the Management Act;
- (b) any income tax paid by or on behalf of an individual for a year of assessment;
- (c) a surcharge imposed under section 59C of that Act; and
- (d) a penalty incurred by an individual under any of the provisions of that Act,

shall be increased under this section by an amount (a “repayment supplement”) equal to interest on the amount repaid at the rate applicable under section 178 of the Finance Act 1989 for the period (if any) between the relevant time and the date on which the order for the repayment is issued.”

(2) For subsection (3) of that section there shall be substituted the following subsection—

“(3) For the purposes of subsection (1) above—

- (a) if the repayment is of an amount paid on account of income tax, the relevant time is either the date on which the amount became due and payable in accordance with section 59A of the Management Act or, if later, the date on which the amount was paid;
- (b) if the repayment is of income tax, the relevant time is either the 31st January next following the year of assessment for which the tax was charged or, if later, the date on which the tax was paid; and
- (c) if the repayment is of a penalty or surcharge, the relevant time is either the date following the expiry of 30 days from the date on which the penalty or surcharge was incurred or imposed or, if later, the date on which the penalty or surcharge was paid.”

(3) The following shall cease to have effect, namely—

- (a) subsection (5) of that section;
- (b) in subsection (9) of that section the words “a partnership” and the words “(within the meaning of section 111 of the Finance Act 1989)”; and
- (c) subsection (10) of that section.

(4) This paragraph, 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.

#### *Interest on tax overpaid*

42 In subsection (2) of section 826 of the Taxes Act 1988 (interest on tax overpaid), for the words “section 10” there shall be substituted the words “ section 59D of the Management Act (payment of corporation tax) ”.

#### *Time limits for elections under Schedule 5*

43 (1) In sub-paragraph (3) of paragraph 2 of Schedule 5 to the Taxes Act 1988 (farming: election for the herd basis), for the words from “not later” to the end there shall be substituted the following paragraphs—

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- “(a) in the case of an election by a person chargeable to income tax, not later than twelve months from the 31st January next following the qualifying year of assessment;
- (b) in the case of an election on behalf of persons in partnership, not later than twelve months from the 31st January next following the year of assessment in which the qualifying period of account ends; and
- (c) in the case of an election by a person chargeable to corporation tax, not later than two years from the end of the qualifying accounting period.”
- (2) In sub-paragraph (4) of that paragraph, for paragraphs (a) and (b) there shall be substituted the following paragraphs—
- “(a) in a case falling within sub-paragraph (3)(a) above, for the qualifying year of assessment and all subsequent years;
- (b) in a case falling within sub-paragraph (3)(b) above, for the qualifying period of account and all subsequent periods of account; and
- (c) in a case falling within sub-paragraph (3)(c) above, for the qualifying accounting period and all subsequent accounting periods.”
- (3) After that sub-paragraph there shall be inserted the following sub-paragraphs—
- “(5) Where, in a case falling within sub-paragraph (3)(a) above, the commencement year immediately precedes the qualifying year of assessment, sub-paragraph (4)(a) above shall have effect as if the reference to the qualifying year of assessment were a reference to the commencement year.
- (6) In this paragraph—
- “commencement year”, in relation to a person chargeable to income tax, means the year of assessment in which his trade is set up and commenced;
- “period of account”, in relation to persons in partnership, means any period for which accounts are drawn up;
- “qualifying accounting period”, in relation to a person chargeable to corporation tax, means the first accounting period during the whole or part of which it kept a production herd of the class in question;
- “qualifying period of account”, in relation to persons in partnership, means the first period of account during the whole or part of which those persons kept such a herd;
- “qualifying year of assessment”, in relation to a person chargeable to income tax, means the first year of assessment after the commencement year for which the amount of profits or gains or losses in respect of his farming is computed for tax purposes by reference to the facts of a period during the whole or part of which he kept such a herd.”
- (4) In paragraph 6 of that Schedule, for sub-paragraphs (2) to (4) there shall be substituted the following sub-paragraphs—

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- “(2) An election for the herd basis made by virtue of sub-paragraph (1) above shall only be valid if made—
- (a) in the case of an election by a person chargeable to income tax, not later than twelve months from the 31st January next following the qualifying year of assessment;
  - (b) in the case of an election on behalf of persons in partnership, not later than twelve months from the 31st January next following the year of assessment in which the qualifying period of account ends; and
  - (c) in the case of an election by a person chargeable to corporation tax, not later than two years from the end of the qualifying accounting period.
- (3) An election for the herd basis made by virtue of sub-paragraph (1) above shall, notwithstanding paragraph 2(4) above, have effect—
- (a) in a case falling within sub-paragraph (2)(a) above, for the qualifying year of assessment and all subsequent years;
  - (b) in a case falling within sub-paragraph (2)(b) above, for the qualifying period of account and all subsequent periods of account; and
  - (c) in a case falling within sub-paragraph (2)(c) above, for the qualifying accounting period and all subsequent accounting periods.
- (4) In this paragraph—
- “period of account”, in relation to persons in partnership, means any period for which accounts are drawn up;
  - “qualifying accounting period”, in relation to a person chargeable to corporation tax, means the first accounting period in which the compensation is relevant;
  - “qualifying period of account”, in relation to persons in partnership, means the first period of account in which the compensation is relevant;
  - “qualifying year of assessment”, in relation to a person chargeable to income tax, means the first year of assessment for which the amount of profits or gains or losses in respect of his farming falls to be computed for tax purposes by reference to the facts of a period in which the compensation is relevant.”

### PART III

#### AMENDMENTS OF OTHER ENACTMENTS

##### *Setting of rates of interest*

- 44 In subsection (2)(f) of section 178 of the <sup>M63</sup>Finance Act 1989 (setting of rates of interest), for the words “sections 86, 86A, 87, 87A, and 88” there shall be substituted the words “ sections 59C, 86, 86A, 87, 87A, 88 and 103A ”.

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**Marginal Citations**

**M63** 1989 c. 26.

*Class 4 contributions*

- 45 In subsection (1) of section 16 of the <sup>M64</sup>Social Security Contributions and Benefits Act 1992 (application of Income Tax Acts to class 4 contributions), for paragraph (b) there shall be substituted the following paragraph—
- “(b) the provisions of Part VA (payment of tax) and Part X (penalties) of the Taxes Management Act 1970.”

**Marginal Citations**

**M64** 1992 c. 4.

*Repayment supplements: capital gains tax*

- 46 (1) In subsection (1) of section 283 of the <sup>M65</sup>Taxation of Chargeable Gains Act 1992 (repayment supplements)—
- (a) for the words from “for which” to “that year of assessment” there shall be substituted the words “ a repayment of that ta is made by the Board or an officer of the Board ”, and
- (b) for the words “the end of the tax month in which” there shall be substituted the words “ the date on which ”.
- (2) For subsection (2) of that section there shall be substituted the following subsection—
- “(2) For the purposes of subsection (1) above, the relevant time is either the 31st January next following the year of assessment for which the tax was payable or, if later, the date on which the tax was paid.”
- (3) In subsection (4) of that section, for the words from “partnership” to “section 701(9) of that Act)” there shall be substituted the words “ trust or ”.
- (4) Subsection (5) of that section shall cease to have effect.

**Marginal Citations**

**M65** 1992 c. 12.

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## SCHEDULE 20

Section 218.

### CHANGES FOR FACILITATING SELF-ASSESSMENT: TRANSITIONAL PROVISIONS AND SAVINGS

#### *Assessment under Cases I and II of Schedule D*

- 1 (1) Subject to paragraph 3(2) below, this paragraph applies in the case of a trade, profession or vocation set up and commenced before 6th April 1994 and continuing after 5th April 1997.
- (2) The basis period for the year 1996-97 shall be as follows—
- (a) where an accounting date falls within the year, the period of twelve months ending with that accounting date; and
  - (b) in any other case, the period of twelve months ending with 5th April 1997.
- (3) Where the basis period for the year 1996-97 is given by paragraph (b) of sub-paragraph (2) above, section 62 of the Taxes Act 1988 shall have effect in relation to the accounting change by virtue of which that paragraph applies as if that change were made in the first year of assessment in which accounts are made up to the new date.
- (4) In this paragraph “accounting date” and “the new date” have the same meanings as in section 62 of the Taxes Act 1988.
- 2 (1) Subject to paragraph 3(2) and (4) below, this paragraph applies in the case of a trade, profession or vocation set up and commenced before 6th April 1994 and continuing after 5th April 1997.
- (2) Subject to sub-paragraph (3) below, sections 60 to 63A of the Taxes Act 1988 shall have effect in relation to the year 1996-97 as if they required income tax under Case I or II of Schedule D to be charged on the appropriate percentage of the aggregate of—
- (a) the full amount of the profits or gains of the basis period for that year, and
  - (b) the full amount of the profits or gains of the relevant period.
- (3) Where, in the case of the year 1995-96, the period on the profits or gains of which income tax is chargeable under Case I or II of Schedule D is that year, sub-paragraph (2) above shall have effect as if for the words from “the appropriate percentage” to the end there were substituted the words “the full amount of the profits or gains of that year”.
- (4) Section 63A of the Taxes Act 1988 shall have effect as if the amount of profits or gains of the basis period for the year 1997-98 which arise [<sup>F72</sup>after the end of—
- (a) the basis period for the year 1996-97; or
  - (b) in the case of a trade or profession carried on by a person in partnership with other persons, the basis period of the partnership for that year,
- and (in either case)] before 6th April 1997 were an overlap profit for the purposes of that section.
- [<sup>F73</sup>(4A) In calculating the amount of the profits or gains of the basis period for the year 1997-98 which arise as mentioned in sub-paragraph (4) above, any deduction of a capital allowance and any addition of a balancing charge shall be ignored.
- (4B) Sub-paragraph (4A) above does not apply in the case of a trade or profession carried on by persons who include both an individual and a company.]

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(5) In this paragraph—

“the appropriate percentage” means the following expressed as a percentage, that is, 365 divided by the number of days in the basis period for the year 1996-97 and the relevant period taken together;

“the relevant period” means the period which—

- (a) begins immediately after the end of the period on the profits or gains of which tax is chargeable for the year 1995-96, and
- (b) ends immediately before the beginning of the basis period for the year 1996-97.

#### Textual Amendments

**F72** Words in Sch. 20 para. 2(4) inserted (1.5.1995) by 1995 c. 4, s. 122(2)

**F73** Sch. 20 para. 2(4A)(4B) inserted (1.5.1995) by 1995 c. 4, s. 122(3)

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

**C6** Sch. 20 para. 2(2) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 1, 13, 14

**C7** Sch. 20 para. 2(4) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 3, 12, 13, 14

Sch. 20 para. 2(4) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 5, 12

- 3 (1) In the case of a trade, profession or vocation set up and commenced before 6th April 1994 and ceasing before 6th April 1997, sections 60 to 63 of the Taxes Act 1988 shall have effect as if sections 200 to 205 of this Act had not been enacted.
- (2) If, in the case of a trade, profession or vocation set up and commenced before 6th April 1994 and ceasing on or after 6th April 1997 but before 6th April 1998, an officer of the Board so directs—
- (a) paragraphs 1 and 2 above shall not apply, and
  - (b) sections 60 to 63 of the Taxes Act 1988 shall have effect as if sections 200 to 205 of this Act had not been enacted.
- (3) Sub-paragraph (4) below applies where, in the case of a trade, profession or vocation set up and commenced before 6th April 1994 and ceasing on or after 6th April 1998 but before 6th April 1999, the profits or gains arising in the year 1996-97 exceed—
- (a) the amount on which income tax has been charged for that year; or
  - (b) the amount on which income tax would have been charged for that year if no deduction or set-off under section 385 of the Taxes Act 1988 had been allowed.
- (4) Notwithstanding anything in sections 60 to 63A of the Taxes Act 1988, if an officer of the Board so directs, income tax for the year 1996-97 shall be charged instead, but subject to any deduction or set-off under section 385 of that Act, on the amount of the profits or gains arising in that year.
- (5) All such adjustments shall be made, whether by way of an assessment to tax or a reduction or discharge of such an assessment or otherwise, as may be necessary to give effect to a direction under sub-paragraph (2) or (4) above.

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

**C8** Sch. 20 para. 3(2) restricted (31.7.1998) by 1998 c. 36, s. 56(5)(9)

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*Assessment under Case III of Schedule D*

- 4 (1) Subject to sub-paragraph (3) below, this paragraph applies in the case of income which—
- (a) is from a source arising before 6th April 1994 and continuing after 5th April 1998, and
  - (b) is chargeable to tax under Case III of Schedule D.
- (2) Section 64 of the Taxes Act 1988 shall have effect in relation to the year 1996-97 as if it required income tax under Case III of Schedule D to be computed on 50 per cent. of the aggregate of—
- (a) the full amount of the income arising within that year; and
  - (b) the full amount of the income arising within the year 1995-96.
- (3) This paragraph does not apply if section 66(1)(c) of that Act applied in relation to the year 1995-96.

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

- C9** Sch. 20 para. 4(2) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 9, 13  
Sch. 20 para. 4(2) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 10, 13

- 5 In the case of income which—
- (a) is from a source arising before 6th April 1994 and ceasing before 6th April 1998, and
  - (b) is chargeable to tax under Case III of Schedule D,
- sections 64, 66 and 67 of the Taxes Act 1988 shall have effect as if section 206 of this Act had not been enacted.

*Assessment under Cases IV and V of Schedule D*

- 6 (1) This paragraph applies in the case of income which—
- (a) is from a source arising before 6th April 1994 and continuing after 5th April 1998, and
  - (b) is chargeable to tax under Case IV or V of Schedule D.
- (2) Subject to sub-paragraph (3) below, section 65 of the Taxes Act 1988 shall have effect in relation to the year 1996-97 as if—
- (a) subsection (1) required income tax chargeable under Case IV or V of Schedule D to be computed on 50 per cent. of the aggregate of—
    - (i) the full amount of the income arising within that year; and
    - (ii) the full amount of the income arising within the year 1995-96,subject (in either case) to the deductions and allowances there mentioned in the case of income not received in the United Kingdom;
  - (b) paragraph (a) of subsection (5) required income tax chargeable under Case IV of Schedule D to be computed on 50 per cent. of the aggregate of—
    - (i) the full amount, so far as it can be computed, of the sums received in the United Kingdom in that year; and
    - (ii) the full amount, so far as it can be computed, of the sums received in the United Kingdom in the year 1995-96,without (in either case) any deduction or abatement; and

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- (c) paragraph (b) of that subsection required income tax chargeable under Case V of Schedule D to be computed on 50 per cent. of the aggregate of—
- (i) the full amount of the actual sums received in the United Kingdom in that year; and
  - (ii) the full amount of the actual sums received in the United Kingdom in the year 1995-96,
- without (in either case) any deduction or abatement other than as there mentioned.
- (3) Sub-paragraph (2) above does not apply if section 66(1)(c) of that Act applied in relation to the year 1995-96.
- (4) Section 63A of the Taxes Act 1988 (as applied by section 65(3) of that Act) shall have effect as if the amount of profits or gains of the basis period for the year 1997-98 which arise before 6th April 1997 were an overlap profit for the purposes of that section.

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

- C10** Sch. 20 para. 6(2)(a) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 6, 13, 14  
 Sch. 20 para. 6(2)(a) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 9, 13  
 Sch. 20 para. 6(2)(a) modified (1.5.1995) by 1995 c. 5, s. 123, Sch. 22 paras. 10, 13  
**C11** Sch. 20 para. 6(4) modified (1.5.1995) by 1995 c. 4, s. 123, Sch. 22 paras. 7, 12, 13, 14

- 7 In the case of income which—
- (a) is from a source arising before 6th April 1994 and ceasing before 6th April 1998, and
  - (b) is chargeable to tax under Case IV or V of Schedule D,
- sections 65 to 68 of that Act shall have effect as if section 207 of this Act and its associated repeals had not been enacted.

*Loss relief*

- 8 Sections 380(1) and 574(1) of the Taxes Act 1988 (as substituted by sections 209(1) and 210(1) of this Act) shall have effect as respects the years 1994-95 and 1995-96 as if for the words “twelve months from the 31st January next following” there were substituted the words “two years after”.

*Capital allowances*

- 9 (1) This paragraph applies in the case of a trade, profession or vocation set up and commenced before 6th April 1994 and continuing after 5th April 1997.
- (2) Section 140 of the <sup>M66</sup>Capital Allowances Act 1990 shall have effect as if the allowances which fall to be made in taxing the trade, profession or vocation for the first period of account ending after 5th April 1997 under the provisions of that Act as they apply for the purposes of income tax included any allowance or part of any allowance—
- (a) which falls to be made in taxing the trade, profession or vocation for the year 1996-97, or is carried forward to that year from a previous year of assessment, and
  - (b) to which full effect cannot be given in the year 1996-97.

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#### Marginal Citations

M66 1990 c.1.

#### *Double taxation relief*

- 10 (1) Subject to paragraph 12(2) below, this paragraph applies in the case of—
- (a) a trade, profession or vocation set up and commenced before 6th April 1994 and continuing after 5th April 1998; or
  - (b) income from a source arising before the former date and continuing after the latter date.
- (2) Subject to sub-paragraph (3) below, the amount of foreign tax to be taken into account in determining whether and, if so, what credit is allowable under Part XVIII of the Taxes Act 1988 against income tax which, in respect of income from any source, is chargeable under Case I or II of Schedule D for the year 1996-97 shall be the appropriate percentage of the aggregate of—
- (a) the amount of foreign tax paid on income from that source arising in the basis period for that year, and
  - (b) the amount of foreign tax paid on income from that source arising in the relevant period.
- (3) Where the period on the profits or gains of which income tax is chargeable under Case I or II of Schedule D for the year 1995-96 is that year, sub-paragraph (2) above shall have effect as if for the words from “the appropriate percentage” to the end there were substituted the words “the amount of foreign tax paid on income arising in that year”.
- (4) Where—
- (a) the amount of the profits or gains on which income tax is chargeable under Case I or II of Schedule D for the year 1996-97 is given by paragraph 2(2) above, and
  - (b) that amount includes income from any source in respect of which credit is allowable under Part XVIII of the Taxes Act 1988,
- the amount of income from that source to be taken into account in determining what credit is so allowable shall be the appropriate percentage of the aggregate of the full amount of the income of the basis period for that year and the full amount of the income of the relevant period.
- (5) [<sup>F74</sup>Subject to sub-paragraph (5A) below,] the amount of foreign tax to be taken into account in determining whether and, if so, what credit is allowable under Part XVIII of the Taxes Act 1988 against income tax which, in respect of income from any source, is chargeable for the year 1996-97 under Case IV or V of Schedule D shall be 50 per cent. of the aggregate of—
- (a) the amount of foreign tax paid on income from that source arising, or (as the case may require) received in the United Kingdom, in that year; and
  - (b) the amount of foreign tax paid on income from that source arising, or (as the case may require) received in the United Kingdom, in the year 1995-96.
- [<sup>F75</sup>(5A) Where the period on the profits or gains of which income tax is chargeable under Case IV or V of Schedule D for the year 1995-96 is that year, sub-paragraph (5) above shall have effect as if for the words from “50 per cent.” to the end there were

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substituted the words “the amount of foreign tax paid on income arising, or (as the case may require) received in the United Kingdom, in that year”.]

(6) In this paragraph—

“the appropriate percentage” and “the relevant period” have the same meanings as in paragraph 2 above;

“double taxation arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988;

“foreign tax” means tax chargeable under the law of a territory outside the United Kingdom for which credit may be allowed under double taxation arrangements or section 790(1) of that Act.

#### Textual Amendments

**F74** Words in Sch. 20 para. 10(5) inserted (1.5.1995) by 1995 c. 4, s. 122(4)

**F75** Sch. 20 para. 10(5A) inserted (1.5.1995) by 1995 c. 4, s. 122(5)

- 11 (1) Subject to paragraph 12(2) below, this paragraph applies in the case of—
- (a) a trade, profession or vocation set up and commenced before 6th April 1994 and continuing after 5th April 1998; or
  - (b) income from a source arising before the former date and continuing after the latter date.
- (2) Sub-paragraph (3) below applies where—
- (a) credit against income tax for the year 1995-96 or any earlier year of assessment is or has been allowed by virtue of subsection (1) of section 804 of the Taxes Act 1988 in respect of any income (“the original income”), and
  - (b) the source of that income ceases in a subsequent year of assessment (“the subsequent year”).
- (3) The following shall be set off one against the other, namely—
- (a) the amount of the credit which, under Part XVIII of the Taxes Act 1988 (including section 804), has been allowed against income tax in respect of the original income, and
  - (b) the aggregate of—
    - (i) the amount of the credit which, apart from that section, would have been so allowed, and
    - (ii) the difference between the amount of the credit which, on the assumptions mentioned in sub-paragraph (4) below, would have been allowable under Part XVIII of that Act for the year 1996-97 and the amount of credit which has been so allowed;
- and if the amount given by paragraph (a) exceeds that given by paragraph (b) above, the person chargeable in respect of income (if any) arising in the subsequent year from the same source as the original income shall 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.
- (4) The assumptions are—
- (a) that the words “the appropriate percentage of” were omitted from paragraph 2(2) above;

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- (b) that the words “50 per cent. of” were omitted from paragraphs (a), (b) and (c) of paragraph 6(2) above; and
    - (c) that paragraph 10 above had not been enacted.
  - (5) Where the period on the income of which income tax is chargeable for the year 1996-97 is that year, sub-paragraph (3) above shall have effect as if for paragraph (b) there were substituted the following paragraph—
    - “(b) the amount of the credit which, apart from that section, would have been so allowed;”.
  - (6) Any reference in sub-paragraph (2) or (3) above to section 804 or Part XVIII of the Taxes Act 1988 includes a reference to the corresponding provisions of any earlier enactments.
  - (7) Any payment which a person is treated by virtue of sub-paragraph (3) above as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than that sub-paragraph and in particular no part of it shall constitute profits or gains brought into charge to income tax for the purposes of section 348 of the Taxes Act 1988.
- 12 (1) In the case of—
- (a) a trade, profession or vocation set up and commenced before 6th April 1994 and ceasing before 6th April 1998, being a trade, profession or vocation in respect of which a direction has been given under paragraph 3(2) above, or
  - (b) income from a source arising before the former date and ceasing before the latter date, being income to which paragraph 7 above applies,
- section 804 of the Taxes Act 1988 shall have effect as if section 217 of this Act and its associated repeals had not been enacted.
- (2) In the case of a trade, profession or vocation set up and commenced before 6th April 1994 and ceasing on or after 6th April 1998 but before 6th April 1999, being a trade, profession or vocation in respect of which a direction has been given under paragraph 3(4) above—
- (a) paragraphs 10 and 11 above shall not apply, and
  - (b) section 804 of the Taxes Act 1988 shall have effect as if section 217 of this Act and its associated repeals had not been enacted.
- 13 Paragraphs 2(2) and 6(2) above shall have effect as if any reference to the full amount of any profits or gains, or the full amount of any income, were a reference to that amount after any reduction which is treated as made by section 811 of the Taxes Act (deduction for foreign tax where no credit allowable).

#### *Supplemental*

- 14 (1) In this Schedule—
- (a) any reference to a source of income arising before any date (“the earlier date”) and continuing after or ceasing before some other date (“the later date”) is a reference to a source of income arising to any person before the earlier date and continuing to be possessed by that person after, or (as the case may be) ceasing to be possessed by that person before, the later date; and
  - (b) any reference to a source of income includes a reference to a part of such a source.

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- (2) 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 this Schedule as arising on the date on which the first amount of income is so received.

## SCHEDULE 21

Section 228.

### LLOYD'S UNDERWRITERS: INDIVIDUALS

#### *Year of assessment in which profits or losses arise*

- 1 (1) After subsection (2) of section 171 of the 1993 Act (taxation of profits and allowance of losses) there shall be inserted the following subsection—
- “(2A) Where the profits arising for any year of assessment from the assets of a member's premiums trust fund include dividends which are foreign income dividends for the purposes of Chapter VA of the Taxes Act 1988, subsection (2) above shall apply in relation to the actual amount of those dividends notwithstanding anything in section 246D of that Act.”
- (2) Subsection (3) of that section shall cease to have effect.
- (3) In this paragraph—
- (a) sub-paragraph (1) has effect for the year 1992-93 and subsequent years of assessment; and
- (b) sub-paragraph (2) has effect for the year 1996-97 and subsequent years of assessment.
- 2 (1) In subsection (1) of section 172 of the 1993 Act (year of assessment in which profits or losses arise), for paragraphs (a) and (b) there shall be substituted the following paragraphs—
- “(a) in the case of profits or losses arising directly from his membership of one or more syndicates, those of any previous year or years which are declared in the corresponding underwriting year;
- (b) in the case of profits or losses arising from assets forming part of a premiums trust fund, 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 the corresponding underwriting year; and”.
- (2) Sub-paragraph (1) above does not have effect for the years 1994-95, 1995-96 and 1996-97, but in relation to those years that section shall have effect as if paragraphs (a) and (b) of subsection (1) were omitted.

#### *Premiums trust funds*

- 3 For subsection (1) of section 174 of the 1993 Act (premiums trust funds) there shall be substituted the following subsection—
- “(1) For the purposes of the Income Tax Acts and the Gains Tax Acts—

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- (a) a member shall be treated as absolutely entitled as against the trustees to the assets forming part of a premiums trust fund of his; 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.”

*Reinsurance to close*

- 4 (1) After subsection (4) of section 177 of the 1993 Act (reinsurance to close) there shall be inserted the following subsection—

“(5) This section also applies in any case where the member to whom the premium is payable is a corporate member within the meaning of Chapter V of Part IV of the Finance Act 1994.”

- (2) This paragraph has effect for the underwriting year 1993 and subsequent underwriting years.

*Stop-loss and quota share insurance*

- 5 (1) In subsection (2) of section 178 of the 1993 Act (stop-loss and quota share insurance)

- (a) for the word “him” there shall be substituted the words “ a member ”; and
- (b) for the word “arose” there shall be substituted the words “ was declared ”.

- (2) This paragraph has effect as respects insurance money and other amounts payable in respect of losses declared in the underwriting year 1997 or subsequent underwriting years.

*Cessation etc.*

- 6 (1) In section 179 of the 1993 Act (cessation: final year of assessment), subsection (3) and, in subsection (2), the words “to subsection (3) below and” shall cease to have effect.

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

**“179A Death of member.**

- (1) This section applies where a member ceases to carry on his underwriting business by reason of death.
- (2) For the purposes of assessing the profits of the member’s underwriting business, the member shall be treated as having died at the end of the year of assessment which corresponds to the underwriting year immediately preceding that in which he actually died.
- (3) For the purposes of the Income Tax Acts—
  - (a) the carrying on of the member’s underwriting business by his personal representatives shall not be treated as a change in the persons engaged in the carrying on of that business; and

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- (b) subject to the provisions of any regulations made by the Board, the business shall be treated as continuing until the member’s deposit at Lloyd’s is paid over to his personal representatives.”
- (3) This paragraph has effect in any case where the member dies after the end of the year 1993-94.

#### *Regulations*

- 7 (1) In section 182 of the 1993 Act (regulations), subsections (2) to (4) shall cease to have effect.
- (2) This paragraph has effect for the year 1997-98 and subsequent years of assessment.

#### *Interpretation*

- 8 (1) In subsection (1) of section 184 of the 1993 Act (interpretation and commencement)
- 
- (a) in the definition of “ancillary trust fund”, the words “or the managing agent of a syndicate of which he is a member” shall cease to have effect; and
- (b) in the definition of “member”, for the words “a member of Lloyd’s who” there shall be substituted the words “ an individual who is a member of Lloyd’s and ”.
- (2) In subsection (2)(c) of that section, for the word “agent”, in both places where it occurs, there shall be substituted the words “ managing agent ”.

#### *Assessment and collection of tax*

- 9 (1) In Schedule 19 to the 1993 Act (assessment and collection of tax), in sub-paragraph (1) of paragraph 2 (returns by managing agent), for the words “after the end of the closing year for a year of assessment” there shall be substituted the words “ after the beginning of a year of assessment ”.
- (2) In sub-paragraph (2) of that paragraph, for the words “the 1st September next following the end of the closing year for the year of assessment” there shall be substituted the words “ 1st September in the year of assessment ”.
- (3) This paragraph has effect for the year 1997-98 and subsequent years of assessment.
- 10 Part II of that Schedule (payments on account of tax) shall cease to have effect.
- 11 (1) After sub-paragraph (3) of paragraph 13 of that Schedule (repayment of tax deducted etc. from investment income) there shall be inserted the following sub-paragraph—
- “(3A) For the purposes of this paragraph a member who is not resident in the United Kingdom shall be treated as entitled to all such tax credits in respect of qualifying distributions as he would be entitled to if he were so resident.”
- (2) After sub-paragraph (4) of that paragraph there shall be inserted the following sub-paragraph—

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“(4A) Where any payment of a tax credit is made under sub-paragraph (1)(b) above—

- (a) each apportioned part of the tax credit which is paid to the members’ agent of a member under sub-paragraph (3)(b) above shall be treated, for the purposes of section 171 of this Act and all other purposes of the Income Tax Acts, as part of the profits arising to the member from assets forming part of a premiums trust fund; but
- (b) subject to that, the tax credit shall be ignored for all purposes of the Income Tax Acts.”

(3) This paragraph has effect as respects the underwriting year 1992 and subsequent underwriting years.

*Special reserve funds*

12 (1) In Schedule 20 to the 1993 Act (special reserve funds), in paragraph 1(1) (preliminary), after the definition of “overall premium limit” there shall be inserted the following definition—

““payment”, unless the contrary intention appears, means a payment in money;”.

(2) In paragraph 7(2) of that Schedule (payments out of fund on cessation), for the words “money’s worth” there shall be substituted the words “ in assets forming part of the fund ”.

(3) This paragraph has effect for the year 1992-93 and subsequent years of assessment.

13 (1) For paragraph 8 of that Schedule (entitlement of member for tax purposes) there shall be substituted the following paragraph—

“8 (1) Subject to sub-paragraph (2) below, a member shall be treated for the purposes of the Income Tax Acts and the Gains Tax Acts as absolutely entitled as against the trustees to the assets forming part of his special reserve fund.

(2) Where an asset is disposed of by a member to the trustees of his special reserve fund, nothing in sub-paragraph (1) above shall affect the operation of the Gains Tax Acts in relation to that disposal.”

(2) This paragraph has effect for the year 1994-95 and subsequent years of assessment.

14 (1) In sub-paragraphs (1) to (4) of paragraph 10 of that Schedule (tax consequences of payments into and out of fund), for the word “corresponding”, in each place where it occurs, there shall be substituted the word “ relevant ”.

(2) After sub-paragraph (4) of that paragraph there shall be inserted the following sub-paragraph—

“(5) In this paragraph “the relevant underwriting year”, in relation to a year of assessment, means the underwriting year next but two before its corresponding underwriting year.”

(3) Sub-paragraphs (1) and (2) above do not have effect for the years 1994-95, 1995-96 and 1996-97, but in relation to those years that Schedule shall have effect as if paragraph 10 were omitted.

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*Status: Point in time view as at 01/04/1996.*

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- 15 (1) In sub-paragraph (2) of paragraph 11 of that Schedule (tax consequences of cessation), for the words “the final year of assessment” there shall be substituted the words “the relevant year of assessment” and for the words “the relevant year” there shall be substituted the words “the relevant underwriting year”.
- (2) In sub-paragraphs (3) and (4) of that paragraph, for the words “the relevant year” there shall be substituted the words “the penultimate underwriting year”.
- (3) For sub-paragraph (5) of that paragraph there shall be substituted the following sub-paragraph—
- “(5) In this paragraph, subject to the provisions of any regulations made by the Board—
- “the penultimate underwriting year” means the underwriting year immediately preceding that in which the member’s deposit at Lloyd’s is paid over to him or his personal representatives or assigns;
- “the relevant underwriting year” means—
- (a) in the case of a member who dies before his deposit at Lloyd’s is paid over to him or his assigns, the underwriting year immediately preceding that corresponding to the relevant year of assessment; and
- (b) in any other case, the underwriting year immediately preceding that in which his deposit at Lloyd’s is paid over to him or his assigns;
- “the relevant year of assessment” means—
- (a) in the case of a member who dies before his deposit at Lloyd’s is paid over to him or his assigns, the year of assessment at the end of which he is treated, by virtue of section 179A(2) of this Act, as having died; and
- (b) in any other case, his final year of assessment.”
- 16 (1) In sub-paragraph (1) of paragraph 13 of that Schedule (winding up of old-style funds), the words from “and a transfer” to the end shall cease to have effect.
- (2) After sub-paragraph (5) of that paragraph there shall be inserted the following sub-paragraph—
- “(6) A transfer or payment under this paragraph of an amount of capital shall be in money or in assets forming part of the fund or both, as the member may direct.”
- (3) This paragraph has effect for the year 1992-93 and subsequent years of assessment.

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## SCHEDULE 22

Sections 231 and 234.

### SUPPLEMENTARY PROVISIONS AS TO ELECTIONS BY REFERENCE TO PIPE-LINE USAGE

#### PART I

##### PROCEDURE FOR AND IN CONNECTION WITH AN ELECTION

###### *The election*

- 1 (1) An election shall be made by serving it on the Board, shall be in such form as may be prescribed by the Board and shall contain such information as the Board may reasonably require with respect to—
- (a) the oil field to which the election is to apply, the pipe-line by reference to which the election is being made and whether the election is to be limited in accordance with subsection (6) of section 231 of this Act;
  - (b) all other assets which, if the election were to be accepted, would at the date of the election be assets to which the election applies;
  - (c) the electing participator's interest in those assets;
  - (d) the sums to which, if the election is accepted, it is reasonable to expect that section 233 of this Act will apply and the sources, quantities and descriptions of oil which will give rise to those sums;
  - (e) any other oil field (whether taxable or non-taxable) in connection with which any of the assets referred to in paragraph (b) above is or is expected to be used or in respect of which services or other business facilities in connection with that use are or are expected to be provided; and
  - (f) the initial usage fraction and the amounts which make up the numerator and the denominator of that fraction.
- (2) The reference in sub-paragraph (1)(e) above to an oil field includes a reference to any area which the electing participator expects might be determined as an oil field under Schedule 1 to the principal Act.
- (3) An election shall include a declaration that it is correct and complete to the best of the knowledge and belief of the electing participator.
- (4) An election shall be irrevocable.

###### *Conditions for acceptance of an election*

- 2 (1) The Board shall reject an election if they are not satisfied—
- (a) that the conditions relating to the pipe-line in paragraphs (a) to (d) of subsection (1) or in subsection (3) of section 231 of this Act are fulfilled; or
  - (b) that the conditions relating to the oil field or the participator in subsection (2) of that section are fulfilled; or
  - (c) that, if the election were to be accepted, the assets to which the election would apply (having regard to any limitation under subsection (6) of that section) have the capacity and characteristics, and are otherwise suitable, to handle the quantities and descriptions of oil specified in accordance with paragraph 1(1)(d) above.

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- (2) Subject to sub-paragraph (3) below, the Board shall also reject an election if it appears to them—
- (a) that any of the information required to be contained in the election by virtue of paragraph 1(1) above is incorrect; or
  - (b) that, after receiving notice in writing from the Board, the electing participator has failed to furnish to the Board on or before the specified date any information which the Board have reasonably required either with respect to the matters specified in paragraph 1(1) above or for the purpose of satisfying themselves as to the matters referred to in sub-paragraph (1) above.
- (3) Before rejecting an election under sub-paragraph (2)(a) above the Board may, if they think fit, by notice in writing give the electing participator an opportunity to correct any error in the information and, if he does so, the information shall then be treated as having been provided in the correct form.
- (4) In sub-paragraph (2)(b) above “the specified date” means such date as may be specified in the notice concerned, being a date not earlier than one month after the date on which the notice was given.
- (5) A notice under sub-paragraph (2)(b) above shall be given within the period of three months beginning on the date on which the election was received by the Board.

*Notice of acceptance or rejection*

- 3 (1) Notice of the acceptance or rejection of an election shall be served on the electing participator before the expiry of the period of three months beginning on whichever of the following dates is the later or latest—
- (a) the date on which the election was received by the Board;
  - (b) if a notice was given under paragraph 2(2)(b) above relating to the election, the date or, as the case may be, the last date which is the specified date, as defined in paragraph 2(4) above, in relation to such a notice;
  - (c) if a notice was given under paragraph 2(3) above relating to the election, the date on which that notice was given.
- (2) If no such notice of acceptance or rejection is so served, the Board shall be deemed to have accepted the election and to have served notice of their acceptance on the last day of the period referred to in sub-paragraph (1) above.

*Appeals*

- 4 (1) Where the Board serve notice on an electing participator under paragraph 3 above rejecting an election, he may appeal to the Special Commissioners against the notice.
- (2) An appeal under sub-paragraph (1) above shall be made by notice of appeal served on the Board within thirty days beginning on the date of the notice in respect of which the appeal is brought.
- (3) Where, at any time after the service of notice of appeal under this paragraph and before the determination of the appeal by the Commissioners, the Board and the appellant agree that the notice in respect of which the appeal is brought should stand or that the election to which it related should be accepted with or without modification, the same consequences shall ensue as if the Commissioners had determined the appeal to that effect.

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- (4) On the hearing of an appeal under this paragraph, the Commissioners shall either dismiss the appeal or allow it; and if the Commissioners allow the appeal, they shall direct either—
  - (a) that the election shall be accepted; or
  - (b) that the election shall have effect subject to such modifications as may be specified in the direction and shall be accepted in its modified form.
- (5) Sub-paragraphs (2), (8) and (11) of paragraph 14 of Schedule 2 to the principal Act shall apply in relation to an appeal against a notice under paragraph 3 above rejecting an election as they apply in relation to an appeal against an assessment or determination made under the principal Act.
- (6) Any reference in this Chapter to an election accepted by the Board shall be construed as including a reference to an election accepted in pursuance of an appeal under this paragraph.

#### *Information to the responsible person*

- 5 (1) Within thirty days of the relevant date, the electing participator shall furnish to the responsible person for the field to which the election applies (or would apply if the election were accepted) a copy of—
  - (a) any election made by him; and
  - (b) any notice under paragraph 3 above accepting or rejecting the election.
- (2) For the purposes of sub-paragraph (1) above, the relevant date is—
  - (a) in the case of an election made by the electing participator, the date on which it was served on the Board; and
  - (b) in the case of a notice under paragraph 3 above, the date on which the electing participator received it.
- (3) In a case where paragraph 9 below applies (or would apply if an election were accepted) sub-paragraphs (1) and (2) above shall require the electing participator additionally to furnish copies of the same documents to the responsible person for any non-chargeable field mentioned in sub-paragraph (3) of that paragraph.
- (4) In a case where paragraph 11 below applies (or would apply if an election were accepted) sub-paragraphs (1) and (2) above shall require the electing participator additionally to furnish copies of the same documents to the old participator referred to in that paragraph.

#### *Penalties for incorrect information*

- 6 Where a participator fraudulently or negligently furnishes any incorrect information or makes any incorrect declaration in or in connection with an election he shall be liable to a penalty not exceeding—
  - (a) in the case of negligence, £50,000, and
  - (b) in the case of fraud, £100,000.

#### *Re-opening election decisions on grounds of incorrect information*

- 7 (1) Without prejudice to paragraph 6 above, this paragraph applies if, at any time after notice of the acceptance of an election has been served by the Board, it appears to

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the Board that, as a result of an error in the information furnished to the Board, the election should not have been accepted.

- (2) If, in a case where this paragraph applies, either—
- (a) the error was attributable, in whole or in part, to the fraudulent or negligent conduct of the electing participator or a person acting on his behalf, or
  - (b) on the error coming to the notice of the electing participator, or a person acting on his behalf, the error was not remedied without unreasonable delay,
- the Board may serve on the electing participator and on the responsible person for the field to which the election applies a notice rescinding the acceptance and stating what appears to the Board to be the correct position.
- (3) When a notice under sub-paragraph (2) above becomes effective, the election shall be treated as having been rejected in accordance with paragraph 3 above.
- (4) If, in a case where this paragraph applies,—
- (a) neither of the conditions in sub-paragraph (2) above is fulfilled, and
  - (b) the Board are of the opinion that, if the correct information had been furnished, the election could have been accepted,
- the election shall be treated as having been made and accepted subject to such modifications (being modifications to correct the effect of the error) as the Board may direct, by notice served on the electing participator and on the responsible person for the field to which the election applies.
- (5) A notice served under sub-paragraph (2) or sub-paragraph (4) above shall become effective either—
- (a) on the expiry of the period during which notice of appeal against the notice may be served on the Board under paragraph 8 below without such notice of appeal being served; or
  - (b) where such notice of appeal is served, when the notice can no longer be varied or quashed by the Special Commissioners or by the order of any court.

*Appeals against re-opening notices*

- 8 (1) This paragraph applies where the Board serve notice under sub-paragraph (2) or sub-paragraph (4) of paragraph 7 above; and in the following provisions of this paragraph such a notice is referred to as a “re-opening notice”.
- (2) The electing participator may, by notice of appeal served on the Board within thirty days beginning on the date of the re-opening notice, appeal to the Special Commissioners against the re-opening notice.
- (3) A notice of appeal under sub-paragraph (2) above shall state the grounds on which the appeal is brought.
- (4) An appeal under this paragraph may at any time be abandoned by notice served on the Board by the electing participator.
- (5) A re-opening notice may be withdrawn at any time before it becomes effective.
- (6) In any case where—
- (a) the electing participator serves notice of appeal against a re-opening notice served under sub-paragraph (4) of paragraph 7 above, and

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- (b) before the appeal is determined by the Special Commissioners, the Board and the electing participator agree as to the modifications necessary to correct the effect of the error concerned,  
the re-opening notice shall take effect subject to such modifications as may be necessary to give effect to that agreement; and thereupon the appeal shall be treated as having been abandoned.
- (7) Subject to sub-paragraph (8) below, on an appeal against a re-opening notice the Special Commissioners may vary the notice, quash the notice or dismiss the appeal; and the notice may be varied whether or not the variation is to the advantage of the electing participator.
- (8) The provisions relating to the variation of a re-opening notice referred to in sub-paragraph (7) above shall not apply in respect of any such notice served under sub-paragraph (2) of paragraph 7 above.

## PART II

### SUPPLEMENTARY PROVISIONS

#### *Assets used in connection with more than one taxable field*

- 9 (1) The provisions of this paragraph apply where—
- (a) an election is in operation; and
  - (b) any of the assets to which the election applies is used or expected to be used in connection with two or more taxable fields.
- (2) Any reference in this paragraph to allowable expenditure has the same meaning as in Part II of Schedule 1 to the 1983 Act and is a reference to expenditure incurred on an asset to which the election applies.
- (3) Sub-paragraph (4) below applies if, by virtue of paragraph 5 of Schedule 1 to the 1983 Act (which, in a case falling within this paragraph, provides for the apportionment of allowable expenditure between two or more fields), any part of the allowable expenditure is apportioned to a taxable field (a “non-chargeable field”) other than the field to which the election applies.
- (4) Where this sub-paragraph applies, then, so far as concerns the electing participator (as a participator in a non-chargeable field), section 232 of this Act shall apply in relation to that part of the allowable expenditure which is apportioned to the non-chargeable field as it applies in relation to the part apportioned to the field to which the election applies.

#### *Transfer of interests*

- 10 (1) If, while an election is in operation, the electing participator (or a person who is treated as an electing participator by virtue of this paragraph) transfers the whole or part of his interest in the field to which the election applies, then, so far as concerns that interest or part, the new participator shall thereafter be treated as the electing participator for the purposes of this Chapter, other than paragraph 11 below, and, in particular,—
- (a) any restriction on the amount of expenditure allowed or allowable by virtue of section 232 of this Act shall continue to apply to any expenditure relief

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- transferred to the new participator under paragraph 6 of Schedule 17 to the <sup>M67</sup>Finance Act 1980; and
- (b) any relief from tax under section 233 of this Act shall apply in relation to the new participator as it applied in relation to the old participator.
- (2) If, in a case where paragraph 9 above applies, the electing participator, as a participator in the non-chargeable field (within the meaning of that paragraph) transfers the whole or part of his interest in that field, sub-paragraph (1) above (except paragraph (b)) shall apply in relation to that transfer as if—
- (a) any reference to the field to which the election applies were a reference to the non-chargeable field; and
- (b) any reference to the electing participator were a reference to him in his capacity as a participator in the non-chargeable field.
- (3) In sub-paragraph (1) above the expressions “the old participator” and “the new participator” have the same meaning as in Schedule 17 to the Finance Act 1980.

#### Marginal Citations

<sup>M67</sup> 1980 c. 48.

- 11 (1) This paragraph applies in any case where—
- (a) the electing participator acquired the whole or any part of his interest in the field to which the election applies as a result of a transfer to which Part I of Schedule 17 to the <sup>M68</sup>Finance Act 1980 applies (so that the electing participator is the new participator); and
- (b) some or all of the relief in respect of any expenditure incurred (before the transfer) on any asset to which the election applies did not fall to be transferred to the electing participator (whether by virtue of paragraph 6 or paragraph 7 of that Schedule).
- (2) With regard to so much of the expenditure referred to in sub-paragraph (1)(b) above as falls to be taken into account under paragraph (b)(i) or paragraph (c)(i) of subsection (9) of section 2 of the principal Act in computing, for any chargeable period ending before the transfer period, the assessable profit or allowable loss accruing to the old participator or any predecessor of his, section 232 of this Act shall apply in the case of the old participator or, as the case may be, his predecessor as it is expressed to apply in the case of the electing participator.
- (3) If, as a result of the operation of sub-paragraph (2) above, there is a reduction in the amount which would otherwise be the accumulated capital expenditure of the old participator at the end of the last chargeable period before the transfer period, paragraph 8 of Schedule 17 to the Finance Act 1980 shall be taken to have transferred a correspondingly reduced amount to the electing participator.
- (4) In this paragraph—
- (a) the expressions “the old participator”, “the new participator” and “the transfer period” have the same meaning as in Schedule 17 to the Finance Act 1980; and
- (b) any reference to a predecessor of the old participator is a reference to a person who (before the transfer referred to in sub-paragraph (1)(a) above) transferred the whole or part of his interest in the field to which the election

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applies either to the old participator or to another person who is a predecessor in title of the old participator in respect of that interest or part.

**Marginal Citations**

**M68** 1980 c. 48.

*Transfer of elected assets*

- 12 (1) This paragraph applies if there is a disposal of an asset which, immediately before the disposal or at an earlier time, was an asset to which an election applies; and in this paragraph—
- (a) “the asset transferred” means the asset so disposed of;
  - (b) “the vendor” means the electing participator or other person by whom the asset is disposed of.
- (2) Where a person has incurred expenditure on the acquisition of a transferred asset, he shall be treated for the purposes of the expenditure relief provisions as having incurred that expenditure only to the extent that it does not exceed the amount which, having regard to section 232 of this Act or the previous operation of this paragraph, was (in the case of the vendor) allowable under those provisions immediately before the disposal in respect of his expenditure on the asset.
- (3) Any expenditure incurred on the asset after the disposal shall be left out of account for the purposes of the expenditure relief provisions.

*Restriction of relief for expenditure incurred after 30th  
November 1993 and before the date of an election*

- 13 (1) This paragraph applies if, after 30th November 1993 and before the date of an election, expenditure was incurred by the electing participator under a contract—
- (a) for the acquisition from any other person of, or of an interest in, an asset to which the election applies; or
  - (b) for the provision by any other person of services or other business facilities of whatever kind in connection with the use of an asset to which the election applies.
- (2) If, in a case where this paragraph applies, the other person referred to in paragraph (a) or paragraph (b) of sub-paragraph (1) above (“the contractor”) has performed his obligations by entering into one or more further contracts, the contractor shall be treated for the purposes of subsection (2) of section 191 of the <sup>M69</sup>Finance Act 1993 (time when expenditure is incurred) as having performed his obligations under the contract only to the extent that, at that time, the asset or interest in question has been acquired by or, as the case may be, the services or other business facilities have been provided to, the electing participator.

**Marginal Citations**

**M69** 1993 c. 34.

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## SCHEDULE 23

Section 236.

### AMENDMENTS OF THE PRINCIPAL ACT RELATING TO VALUATION OF LIGHT GASES

- 1 (1) In section 2 (assessable profits and allowable losses), in subsection (5) (amounts to be included in calculation of gross profit or loss) in each of paragraphs (b) and (c), after the word “oil”, in the first place where it occurs, there shall be inserted “ (not being light gases) ” and after paragraph (c) there shall be inserted—
  - “(ca) the market value, ascertained in accordance with paragraph 3A of Schedule 3 to this Act, of so much of any light gases so won and disposed of by him otherwise than in sales at arm’s length as was delivered by him in the period; and
  - (cb) the market value, ascertained in accordance with paragraph 3A of Schedule 3 to this Act, of so much of any light gases so won as was relevantly appropriated by him in the period without being disposed of; and”.
- (2) In subsection (9) of that section (amounts to be taken into account in determining amount of debit or credit in respect of expenditure), in paragraph (a)—
  - (a) in sub-paragraph (i) the words “or, as the case may be” shall be omitted;
  - (b) in that sub-paragraph after the words “delivery was made” there shall be inserted the words “ or (in the case of light gases) its market value as determined in accordance with paragraph 3A of Schedule 3 to this Act, as the case may require ”; and
  - (c) at the end of sub-paragraph (ii) there shall be inserted the words “ or (in the case of light gases) the market value as determined in accordance with paragraph 3A of Schedule 3 to this Act ”.
- 2 In Schedule 2 (management and collection of PRT), in paragraph 2(2) (returns by participators), in paragraph (a)(iii) after the words “delivery was made” and in paragraph (b)(ii) after the word “made” there shall be inserted the words “ or (in the case of light gases) the market value as determined in accordance with paragraph 3A of Schedule 3 to this Act ”.
- 3 (1) In Schedule 3 (miscellaneous provisions relating to PRT), in paragraph 2 (definition of market value of oil)—
  - (a) at the beginning of sub-paragraph (1) there shall be inserted the words “ Except in the case of light gases ”; and
  - (b) at the end of that sub-paragraph there shall be added the words “ and, accordingly, references in the following provisions of this paragraph to oil do not apply to light gases ”.
- (2) In paragraph 2A of that Schedule (definition of market value of oil consisting of or including gas), after sub-paragraph (1) there shall be inserted the following sub-paragraph—
 

“(1A) Sub-paragraphs (2) and (3) below also apply where the market value of any light gases falls to be ascertained under paragraph 3A below.”
- (3) In sub-paragraph (2) of paragraph 2A, after the words “paragraph 2 above”, in each place where they occur, there shall be inserted “ or, as the case may require, sub-paragraph (2)(b) of paragraph 3A below ”.

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- (4) In sub-paragraph (3) of paragraph 2A, after the words “paragraph 2”, in the first place where they occur, there shall be inserted “ or, as the case may require, in accordance with paragraph 3A below ”.
- (5) Sub-paragraph (4) of paragraph 2A shall be omitted.
- 4 After paragraph 3 of Schedule 3 (aggregate market value of oil) there shall be inserted—

*“ Definition of market value of light gases*

- 3A (1) The market value of any light gases for the purposes of this Part of this Act is the price at which, having regard to all the circumstances relevant to the disposal or appropriation in question, light gases of that kind might reasonably have been expected to be sold under a contract of sale satisfying the conditions specified in sub-paragraph (2) below.
- (2) The conditions referred to in sub-paragraph (1) above are that—
- (a) the contract is for the sale of the gases at arm’s length to a willing buyer;
  - (b) the contract requires the gases to have been subjected to appropriate initial treatment before delivery; and
  - (c) the contract requires the gases to be delivered—
    - (i) in the case of gases extracted in the United Kingdom, at the place of extraction; or
    - (ii) in the case of gases extracted from strata in the sea bed and subsoil of the territorial sea of the United Kingdom or of a designated area, at the place in the United Kingdom or another country at which the seller could reasonably be expected to deliver the gases or, if there is more than one such place, the one nearest to the place of extraction.
- (3) If the circumstances referred to in sub-paragraph (1) above are such that the price referred to in that sub-paragraph might reasonably be expected to include—
- (a) any such payments as are referred to in subsection (2) of section 114 of the Finance Act 1984 (treatment of certain payments relating to gas sales), or
  - (b) any capacity payments, as defined in subsection (5) of that section,
- section 114 of the Finance Act 1984 shall apply accordingly in relation to the notional contract specified in sub-paragraph (1) above as it applies in relation to an actual contract.
- (4) This paragraph has effect subject to sub-paragraphs (2) and (3) of paragraph 2A above.”

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## SCHEDULE 24

Section 252.

## PROVISIONS RELATING TO THE RAILWAYS ACT 1993

*Interpretation*

## 1 (1) In this Schedule—

“the Allowances Act” means the <sup>M70</sup>Capital Allowances Act 1990;

“the Board” means the British Railways Board;

“fixture” has the same meaning as it has in Chapter VI of Part II of the Allowances Act;

“franchise company” has the meaning given by section 85(8) of the <sup>M71</sup>Railways Act 1993;

“the Franchising Director” means the Director of Passenger Rail Franchising;

“the Gains Act” means the <sup>M72</sup>Taxation of Chargeable Gains Act 1992;

“predecessor”, in relation to any relevant transfer, means the body from which the property, rights or liabilities in question are transferred by virtue of the restructuring scheme in question;

“property”, “rights” and “liabilities” have the same meaning as they have in Part II of the Railways Act 1993;

“publicly owned railway company” has the same meaning as it has in the Railways Act 1993;

“relevant transfer” means a transfer of any property, rights or liabilities by virtue of a restructuring scheme;

“restructuring scheme” means a section 85 transfer scheme made by, or pursuant to a direction of, the Secretary of State, if and to the extent that the transfer scheme provides for the transfer of property, rights or liabilities from—

(a) the Board,

(b) a wholly owned subsidiary of the Board,

(c) a publicly owned railway company, or

(d) a company which is wholly owned by the Franchising Director,

to any other body falling within paragraphs (a) to (d) above;

“section 85 transfer scheme” means a scheme made under or by virtue of section 85 of the Railways Act 1993;

“subsidiary” has the meaning given by section 736 of the <sup>M73</sup>Companies Act 1985;

“successor company” has the same meaning as it has in Part II of the Railways Act 1993;

“transfer date” shall be construed in accordance with section 85(6) of the Railways Act 1993;

“transfer scheme” means a scheme made under or by virtue of section 85 or 86 of the Railways Act 1993;

“transferee”, in relation to a relevant transfer, means the body to which the property, rights or liabilities in question are transferred by virtue of the restructuring scheme in question;

*Status: Point in time view as at 01/04/1996.*

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“wholly owned subsidiary” has the meaning given by section 736 of the <sup>M74</sup>Companies Act 1985.

- (2) Section 151(2) and (3) of the <sup>M75</sup>Railways Act 1993 (companies wholly owned by the Crown or the Franchising Director) shall have effect for the purposes of this Schedule as it has effect for the purposes of that Act.
- (3) Any reference in this Schedule to “assignment” shall be construed in Scotland as a reference to “assignation”.
- (4) This Schedule—
  - (a) so far as it relates to income tax, shall be construed as one with the Income Tax Acts,
  - (b) so far as it relates to corporation tax, shall be construed as one with the Corporation Tax Acts, and
  - (c) so far as it relates to capital allowances, shall be construed as one with the Capital Allowances Acts.

#### Marginal Citations

- M70** 1990 c. 1.  
**M71** 1993 c. 43.  
**M72** 1992 c. 12.  
**M73** 1985 c. 6.  
**M74** 1985 c. 6.  
**M75** 1993 c. 43.

#### *Chargeable gains: transfer to be without gain or loss*

- 2 (1) For the purposes of the Gains Act, where there is a relevant transfer, the disposal of property, rights and liabilities which is constituted by that transfer shall, subject to the following provisions of this Schedule, be taken, in relation to the transferee as well as the predecessor, to be for a consideration such that no gain or loss accrues to the predecessor.
- (2) Section 35(3)(d) of the Gains Act (list of provisions for transfers without gain or loss for purposes of provisions applying to assets held on 31st March 1982) shall have effect with the omission of the word “and” at the end of sub-paragraph (vii) and with the insertion, after sub-paragraph (viii), of the following sub-paragraph—

“(ix) paragraphs 2(1), 7(2), 11(3) and (4) and 25(2) of Schedule 24 to the Finance Act 1994;”.
- (3) Section 171(1) of the Gains Act (which makes provision in relation to the disposal of assets from one member of a group of companies to another member of the group) shall not apply where the disposal in question is a relevant transfer.

#### *Chargeable gains: receipt of compensation or insurance policies*

- 3 (1) Subsection (4) of section 23 of the Gains Act (adjustments where compensation or insurance money used for purchase of replacement asset) shall have effect in accordance with sub-paragraph (3) below in any case where—
  - (a) there is a relevant transfer such that—

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- (i) any capital sum received by the predecessor by way of compensation for the loss or destruction of any asset, or under a policy of insurance of the risk of the loss or destruction of any asset, becomes available to the transferee; or
  - (ii) any right of the predecessor to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the predecessor acquired the asset by the application of that sum, the predecessor would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (2) Subsection (5) of that section (adjustments where a part of any compensation or insurance money is used for the purchase of a replacement asset) shall have effect in accordance with sub-paragraph (3) below in any case where—
- (a) there is a relevant transfer such that—
    - (i) any capital sum received by the predecessor by way of compensation for the loss or destruction of any asset, or under a policy of insurance of the risk of the loss or destruction of any asset, becomes available to the transferee; or
    - (ii) any right of the predecessor to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the predecessor acquired the asset by the application of all of that sum except for a part which was less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the asset lost or destroyed, the predecessor would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (3) In a case falling within sub-paragraph (1) or (2) above, subsection (4) or, as the case may be, subsection (5) of section 23 of the Gains Act shall have effect as if the transferee and the predecessor were the same person, except that—
- (a) in a case falling within sub-paragraph (1)(a)(i) or (2)(a)(i) above—
    - (i) any claim under the subsection in question must be made by the predecessor and the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the predecessor; and
  - (b) in a case falling within sub-paragraph (1)(a)(ii) or (2)(a)(ii) above—
    - (i) any claim under the subsection in question must be made by the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the transferee.

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*Chargeable gains: section 30 of the Gains Act*

- 4 (1) Nothing in Part II or III of the <sup>M76</sup>Railways Act 1993, and no instrument or agreement made, or other thing done, under or by virtue of either of those Parts, shall be regarded as a scheme or arrangement for the purposes of section 30 of the Gains Act (value-shifting).
- (2) In any case where—
- (a) an asset which is the subject of a relevant transfer or qualifying disposal has previously been the subject of a scheme or arrangements falling within subsection (1) of that section,
  - (b) in consequence, subsection (5) of that section (consideration on disposal to be treated as increased for certain purposes) would, apart from sub-paragraph (3) below, have had effect in relation to the consideration for the relevant transfer or qualifying disposal, and
  - (c) the consideration for the relevant transfer or qualifying disposal falls to be determined under paragraph 2 above or paragraph 7(2), 11(3) or 25(2) below, sub-paragraph (3) below shall apply.
- (3) Where this sub-paragraph applies—
- (a) the said subsection (5) shall not have effect in relation to the consideration for the relevant transfer or qualifying disposal; but
  - (b) on the first subsequent disposal of the asset which is neither a relevant transfer or qualifying disposal nor a group disposal—
    - (i) that subsection shall have effect in relation to the consideration for that disposal (whether or not it would otherwise have done so); and
    - (ii) the increase that falls to be made under that subsection shall be so calculated as to include any increase which would, but for paragraph (a) above, have fallen to be made in relation to the relevant transfer or qualifying disposal.
- (4) In this paragraph—
- “group disposal” means a disposal which falls to be treated by virtue of section 171(1) of the Gains Act as made for a consideration such that no gain or loss accrues to the person making the disposal;
  - “qualifying disposal” means—
    - (a) a disposal to which paragraph 7(2) below applies; or
    - (b) a disposal falling within paragraph 11(3) or 25(2) below.

**Commencement Information**

**I3** [Sch. 24 para. 4](#) in force retrospectively (5.11.1993 as to para. 4(1) and otherwise 11.1.1994) as mentioned in s. 252(2)(3).

**Marginal Citations**

**M76** [1993 c. 43](#).

*Chargeable gains: section 41 of the Gains Act*

- 5 Subsection (1) of section 174 of the Gains Act (which applies section 41 of that Act to cases where assets have been acquired without gain or loss) shall have effect,

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without prejudice to paragraph 2 above or paragraph 7(2), 11(3) or (4) or 25(2) below, where there has been—

- (a) a relevant transfer,
- (b) a disposal to which paragraph 7(2) below applies, or
- (c) a disposal falling within paragraph 11(3) or (4) or 25(2) below,

as if the asset to which the transfer or disposal relates had thereby been transferred and acquired in relevant circumstances, within the meaning of that subsection.

*Chargeable gains: roll-over relief*

- 6 (1) Subject to the following provisions of this paragraph, where any asset, or any interest in an asset, is the subject of a relevant transfer, sections 152 to 160 of the Gains Act (roll-over relief on replacement of business assets) shall have effect as if—
- (a) the asset or interest had been acquired by the transferee—
    - (i) at the time at which, and for the consideration for which, the predecessor acquired it; and
    - (ii) for the purpose of the asset's use in a trade carried on by the transferee (and not wholly or partly for the purpose of realising a gain from the disposal of the asset or interest), but only to the extent that the predecessor's acquisition was for the purpose of the asset's use in a trade carried on by him (and not wholly or partly for the purpose of realising a gain from the disposal of the asset or interest);
  - (b) throughout the period during which the asset or interest was owned by the predecessor, it had been owned by the transferee; and
  - (c) to the extent that the predecessor—
    - (i) used the asset, or
    - (ii) in the case of an asset falling within head A of Class 1 in section 155 of that Act, used and occupied the asset,
 during that period for the purposes of a trade carried on by him, the transferee had used or, as the case may be, used and occupied the asset for the purposes of a trade carried on by him.
- (2) In any case where—
- (a) a held-over gain would, but for the provisions of section 154 of the Gains Act (depreciating assets), have been carried forward to a depreciating asset, and
  - (b) that asset is the subject of a relevant transfer,
- that section shall have effect as if the gain had accrued to, and the claim for it to be held over had been made by, the transferee and as if the predecessor's acquisition of the depreciating asset had been the transferee's acquisition of that asset.
- (3) Where an asset, or an interest in an asset, is the subject of a relevant transfer, the predecessor shall not be entitled at any time after the coming into force of the relevant transfer to make any claim under section 152 or 153 of the Gains Act in respect of his acquisition of the asset or interest.
- (4) Where an asset, or an interest in an asset, is the subject of a relevant transfer, the transferee shall not, by virtue of any provision of this Schedule, be treated for the purposes of sections 152 to 154 of the Gains Act as having applied the whole or any part of the consideration for any disposal—
- (a) in acquiring the asset or interest by virtue of the relevant transfer; or

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- (b) in acquiring the asset or interest as postulated in sub-paragraph (1)(a) above, if the predecessor has made a claim under section 152 or 153 of that Act in respect of his acquisition of the asset or interest.
- (5) Without prejudice to paragraph 1(4)(b) above, expressions used in sub-paragraph (2) above and in section 154 of the Gains Act have the same meaning in that sub-paragraph as they have in that section.

*Chargeable gains: agreements and instruments by virtue of section 91(1)(c) of the Railways Act 1993*

- 7 (1) Sub-paragraph (2) below applies to any disposal effected pursuant to an obligation imposed by a section 85 transfer scheme by virtue of section 91(1)(c) of the <sup>M77</sup>Railways Act 1993 (obligations to enter into agreements or execute instruments) if the person making the disposal is—
- (a) the Board,
  - (b) a wholly owned subsidiary of the Board,
  - (c) a publicly owned railway company, or
  - (d) a company which is wholly owned by the Franchising Director,
- and the person to whom the disposal is made is either a person falling within paragraphs (a) to (d) above or the Franchising Director.
- (2) A disposal to which this sub-paragraph applies shall be taken for the purposes of corporation tax on chargeable gains, in relation to the person to whom the disposal is made as well as the person making the disposal, to be effected for a consideration such that no gain or loss accrues to the person making the disposal.
- (3) Section 171(1) of the Gains Act (transfers within a group) shall not apply where the disposal in question is one to which sub-paragraph (2) above applies.
- (4) Section 17 of that Act (disposals and acquisitions treated as made at market value) shall not have effect in relation to a disposal or the corresponding acquisition if—
- (a) the disposal is effected pursuant to an obligation imposed by a section 85 transfer scheme by virtue of section 91(1)(c) of the <sup>M78</sup>Railways Act 1993,
  - (b) the person making the disposal is either a person falling within paragraphs (a) to (d) of sub-paragraph (1) above or the Franchising Director, and
  - (c) the person making the corresponding acquisition is neither a person falling within those paragraphs nor the Franchising Director,
- unless the person making the disposal is connected with the person to whom the disposal is made.
- (5) In this paragraph, “the corresponding acquisition”, in the case of any disposal, means the acquisition made by the person to whom the disposal is made.

**Marginal Citations**

- M77** 1993 c. 43.  
**M78** 1993 c. 43.

*Status: Point in time view as at 01/04/1996.*

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*Chargeable gains: group transactions*

- 8 (1) For the purposes of section 179 of the Gains Act (company ceasing to be a member of a group), where any company (“the degrouped company”) ceases, by virtue of a qualifying transaction, to be a member of a group of companies, the degrouped company shall not, by virtue of that qualifying transaction, be treated under that section as having sold, and immediately reacquired, any asset acquired from a company which was at the time of acquisition a member of that group.
- (2) Where sub-paragraph (1) above applies in relation to any asset, section 179 of the Gains Act shall have effect on the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (the “subsequent group”), otherwise than by virtue of a qualifying transaction, as if both the degrouped company and the company from which the asset was acquired had been members of the subsequent group at the time of acquisition.
- (3) Where, disregarding any preparatory transactions, a company would be regarded for the purposes of section 179 of the Gains Act (and, accordingly, of this paragraph) as ceasing to be, or becoming, a member of a group of companies by virtue of a qualifying transaction, it shall be regarded for those purposes as so doing by virtue of the qualifying transaction and not by virtue of any preparatory transactions.
- (4) In this paragraph—  
     “preparatory transaction” means anything done under or by virtue of Part II of the Railways Act 1993 for the purpose of initiating, advancing or facilitating the qualifying transaction in question;  
     “qualifying transaction” means—  
     (a) a relevant transfer;  
     (b) any other transfer or disposal under or by virtue of section 85, 88(6) or (7) or 89 of the Railways Act 1993.
- (5) Expressions used in this paragraph and in section 179 of the Gains Act have the same meaning in this paragraph as they have in that section.

*Chargeable gains: disposal of debts*

- 9 (1) Where by virtue of any relevant transfer—  
     (a) any debt owed to the predecessor is transferred to the transferee, and  
     (b) the predecessor would, apart from this sub-paragraph, be the original creditor in relation to that debt for the purposes of section 251 of the Gains Act (disposal of debts),  
 that Act shall have effect as if the transferee and not the predecessor were the original creditor for those purposes.
- (2) Where, by virtue of any relevant transfer, any obligations of the predecessor under a guarantee of the repayment of a loan are transferred to the transferee, the transferee shall be treated for the purposes of section 253(4) of the Gains Act (relief for guarantors) as a person who gave the guarantee.
- (3) In any case where—  
     (a) by virtue of any relevant transfer, a debt owed to the predecessor is transferred to the transferee,

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- (b) that debt is either—
- (i) a right to the repayment of any amount outstanding as principal on a loan which is a qualifying loan for the purposes of either of sections 253 and 254 of the Gains Act (relief for irrecoverable debts owed by traders and payments under guarantees), or
  - (ii) a right to recover any amount paid under a guarantee of the repayment of such a loan or of a loan which would be such a loan but for section 253(1)(c) of that Act (exclusion of debts not on security), and
- (c) no allowable loss in respect of the amount mentioned in paragraph (b)(i) or (ii) above has been claimed by the predecessor under either of sections 253 and 254 of that Act before the coming into force of the relevant transfer,
- those sections shall have effect with the modifications set out in sub-paragraph (4) below.

(4) Those modifications are—

- (a) that the loan or, as the case may be, the guarantee shall be treated as if it had been made or given by the transferee, and
- (b) that any payment made under the guarantee by the predecessor shall be treated as if it had been made by the transferee,

and those sections shall accordingly have effect as if there had been no assignment of the right to recover the principal of the loan or of any right to recover an amount paid under the guarantee.

(5) In any case where—

- (a) a debt falling within sub-paragraph (3)(b) above is transferred by virtue of a relevant transfer, and
- (b) before the coming into force of the relevant transfer, the predecessor has claimed a loss in respect of the amount mentioned in sub-paragraph (3)(b) (i) or (ii) above under section 253 or 254 of the Gains Act,

the relevant transfer shall not be treated as an assignment of the debt for the purposes of those sections and sub-paragraph (2) above shall not have effect in relation to the transferee, so far as relating to the amount mentioned in paragraph (b) above.

(6) In any case where—

- (a) any right to the recovery of an amount falling within subsection (3) of section 253 of the Gains Act (relief in respect of certain irrecoverable loans) is transferred by virtue of a relevant transfer,
- (b) an allowable loss determined by reference to that amount has been treated under that subsection as accruing to the predecessor, and
- (c) the whole or any part of that amount is at any time recovered by the transferee or by a company in the same group of companies as the transferee,

that Act shall have effect as if a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered had accrued to the transferee or, as the case may be, to the company in the same group as the transferee.

(7) In any case where—

- (a) any right to the recovery of an amount falling within subsection (4) of section 253 of the Gains Act is transferred by virtue of a relevant transfer,
- (b) an allowable loss determined by reference to that amount has been treated under that subsection as accruing to the predecessor, and

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- (c) the whole or any part of the amount mentioned in subsection (4)(a), or the whole or any part of the amount of the payment mentioned in subsection (4)(b), of that section is at any time recovered by the transferee or by a company in the same group of companies as the transferee,  
 that Act shall have effect as if a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered had accrued to the transferee or, as the case may be, to the company in the same group as the transferee.
- (8) In any case where—
- (a) any right to recovery of the relevant outstanding amount, as defined in subsection (11) of section 254 of the Gains Act, is transferred by virtue of a relevant transfer,
  - (b) an allowable loss determined by reference to that amount has been treated under subsection (2) of that section (relief for debts on qualifying corporate bonds) as accruing to the predecessor, and
  - (c) the whole or any part of that amount is at any time recovered by the transferee or by a company in the same group of companies as the transferee,
- that Act shall have effect as if a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered had accrued to the transferee or, as the case may be, to the company in the same group as the transferee.
- (9) In any case where sub-paragraph (6), (7) or (8) above applies in relation to an allowable loss, subsections (7) and (8) of section 253 of the Gains Act and subsection (10) of section 254 of that Act (which deem a chargeable gain to arise where an amount treated as an allowable loss is recovered by another company in the same group) shall not apply in relation to that allowable loss.
- (10) Expressions used in this paragraph and in section 253 or 254 of the Gains Act have the same meaning in this paragraph as they have in that section.

*Chargeable gains: assets held before 6th April 1965*

- 10 Schedule 2 to the Gains Act (assets held on 6th April 1965) shall have effect in relation to any assets which vest in the transferee by virtue of a relevant transfer as if—
- (a) the predecessor and the transferee were the same person; and
  - (b) those assets, to the extent that they were in fact acquired or provided by the predecessor, were acquired or, as the case may be, provided by the transferee.

*Chargeable gains: miscellaneous disposals and acquisitions*

- 11 (1) In this paragraph, “relevant disposal” means—
- (a) a disposal by virtue of a section 85 transfer scheme, other than a restructuring scheme, to the extent that the scheme provides for the transfer of property, rights and liabilities of—
    - (i) the Board,
    - (ii) a wholly owned subsidiary of the Board,
    - (iii) a publicly owned railway company, or
    - (iv) a company which is wholly owned by the Franchising Director,
 to a franchise company or to the Franchising Director;

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- (b) a disposal pursuant to a direction under section 88(6) or (7) or 89 of the <sup>M79</sup>Railways Act 1993;
  - (c) a disposal by or pursuant to an agreement or instrument made or executed, transaction effected or direction given under or by virtue of paragraph 2, 3 or 14(2) of Schedule 8 to that Act, in a case where the transfer scheme in question is a section 85 transfer scheme, other than a restructuring scheme; or
  - (d) a disposal pursuant to a requirement imposed under paragraph 7(2)(b) of that Schedule, in a case where the transfer to which that Schedule applies is a transfer by virtue of a section 85 transfer scheme.
- (2) Subject to sub-paragraph (3) below, section 17 of the Gains Act (disposals and acquisitions treated as made at market value) shall not have effect—
- (a) in relation to a relevant disposal or the corresponding acquisition,
  - (b) in relation to an acquisition by a franchise company, in a case where the corresponding disposal is a disposal by the Franchising Director by virtue of a section 85 transfer scheme, or
  - (c) in relation to a disposal of a historical record or artefact in accordance with directions under section 125 of the <sup>M80</sup>Railways Act 1993 (railway heritage), unless, in a case falling within paragraph (a) or (b) above, the person making the disposal is connected with the person making the acquisition.
- (3) Where there is a relevant disposal of an asset of—
- (a) the Board,
  - (b) a subsidiary of the Board,
  - (c) a publicly owned railway company, or
  - (d) a company wholly owned by the Franchising Director,
- to the Franchising Director or a company wholly owned by the Crown, the disposal shall be taken for the purposes of the Gains Act, in relation to the person making the disposal and, if the disposal is made to a company wholly owned by the Crown, the person to whom the disposal is made, to be for a consideration such that no gain or loss accrues on the disposal.
- (4) Where there is a disposal of a historical record or artefact in accordance with directions under section 125 of the <sup>M81</sup>Railways Act 1993 and the disposal is either—
- (a) for a consideration not exceeding the sums which are allowable as a deduction under section 38 of the Gains Act (consideration for, and incidental costs of, original acquisition etc), or
  - (b) for no consideration,
- the disposal shall be taken for the purposes of the Gains Act, in relation to the person to whom the disposal is made as well as the person making the disposal, to be for a consideration such that no gain or loss accrues on the disposal.
- (5) In this paragraph—
- “the corresponding acquisition”, in the case of any disposal, means the acquisition made by the person to whom the disposal is made;
  - “the corresponding disposal” in the case of any acquisition, means the disposal to the person by whom the acquisition is made.

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#### Marginal Citations

- M79** 1993 c. 43.  
**M80** 1993 c. 43.  
**M81** 1993 c. 43.

#### *Transfers of trading stock*

- 12 (1) This paragraph applies in any case where—
- (a) by virtue of a relevant transfer, any trading stock belonging to a trade carried on by the predecessor (“the predecessor’s trade”) vests in the transferee, and
  - (b) the trading stock is acquired by the transferee as trading stock for the purposes of a trade which he carries on or which he begins to carry on after the relevant transfer (“the transferee’s trade”).
- (2) Where this paragraph applies, the trading stock in question shall, for the purposes (whether in relation to the predecessor or the transferee) of computing for the purposes of the Corporation Tax Acts the profits or gains of the predecessor’s trade and the transferee’s trade,—
- (a) be taken to have been both disposed of by the predecessor and acquired by the transferee in the course of those trades and (subject to that) at the time when the transfer comes into force; and
  - (b) be valued in each case as if that disposal and acquisition had been for a consideration which in relation to the predecessor would have resulted in neither a profit nor a loss being brought into account in respect of the disposal in the accounting period of the predecessor which is current at that time.
- (3) In this paragraph “trading stock” has the same meaning as in section 100 of the Taxes Act 1988.

#### *Transfer of rights to receipts*

- 13 Where, by virtue of any relevant transfer, there is transferred any right of the predecessor to receive any amount which is for the purposes of corporation tax—
- (a) an amount brought into account as a trading receipt of the predecessor for any accounting period ending before the time when the transfer comes into force, or
  - (b) an amount falling to be so brought into account if it is assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before that time,
- the transfer shall not require any modification of the way in which that amount has been and is to be treated in relation to the predecessor for those purposes or entitle any amount due or paid in respect of that right to be treated as a trading receipt of the transferee for any accounting period.

#### *Transfer of liabilities*

- 14 (1) If the whole or any part of the amount of a liability transferred by virtue of a relevant transfer falls, for the purposes of corporation tax,—

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- (a) to be brought into account as deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period ending before the time when the transfer comes into force, or
- (b) to be so brought into account if it is assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before that time,

then the transfer shall not require any modification of the way in which that amount or, as the case may be, that part of that amount has been or is to be treated in relation to the predecessor for those purposes or entitle any amount due or paid in respect of that liability or, as the case may be, the corresponding part of that liability to be deductible in computing the transferee's profits, or any description of the transferee's profits, for any accounting period.

- (2) If and to the extent that the amount of any liability which, in consequence of any relevant transfer, falls to be discharged by the transferee is an amount which would (but for that and any other transfer) have fallen to be deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period beginning with the coming into force of the transfer or at any subsequent time, that amount shall, to that extent,—

- (a) not be so deductible; but
- (b) subject to sub-paragraph (3) below, be deductible in computing the transferee's profits to the same extent as if the transferee had become subject to the obligation in pursuance of which the liability arises or has arisen at the same time and for the same consideration, and otherwise on the same terms and in the same circumstances, as the predecessor;

and for the purposes of this sub-paragraph it shall be assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before the coming into force of that transfer.

- (3) For the purposes of corporation tax, where any relevant transfer has the effect that any liability falls to any extent to be discharged by the transferee instead of by the predecessor, the amounts deductible in computing the transferee's profits, or any description of the transferee's profits, for any accounting period shall not include any amount in respect of so much of that liability as falls to be so discharged unless it is an amount which (but for that and any other transfer) would have fallen to be deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period beginning or ending after the coming into force of that transfer.

- (4) The preceding provisions of this paragraph shall apply in relation to the deduction of charges on income against the total profits of the predecessor or transferee for any period as they apply in relation to the deduction of any amount in the computation for that period of the profits of the predecessor or, as the case may be, of the transferee.

- (5) For the purposes of Chapter II of Part VI of the Taxes Act 1988 (definition of distributions), where in the case of any relevant transfer any consideration given or treated as given in respect of a security relating to—

- (a) any liability, or
- (b) the use of the principal to which any liability, being a liability to interest or an equivalent liability, relates,

would fall (apart from this sub-paragraph) to be regarded for those purposes as new consideration received by the predecessor, that consideration shall be treated instead,

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to the extent that it relates to so much of the liability as falls in consequence of the transfer to be discharged by the transferee, as if it were new consideration received by the transferee.

### *Trading losses*

- 15 (1) Subject to the following provisions of this paragraph, where as a result of a relevant transfer, the predecessor falls to be regarded for the purposes of section 343 of the Taxes Act 1988 (company reconstructions without change of ownership) as ceasing to carry on a trade and the transferee falls to be regarded for the purposes of that section as beginning to carry on that trade—
- (a) the transferee shall not, by virtue of those matters, be entitled to any relief under section 393(1) (trading losses) of that Act to which it would, apart from this paragraph, have been entitled by virtue of section 343(3) of that Act; and
  - (b) after the coming into force of the relevant transfer, the loss in question shall continue to be regarded for the purposes of the Corporation Tax Acts as a loss incurred in the trade for the time being carried on by the predecessor to the same extent as it would have been so regarded apart from the relevant transfer (and shall be eligible for relief accordingly).
- (2) The following provisions of this paragraph apply in any case where—
- (a) a restructuring scheme makes express provision for the transfer from the predecessor to the transferee of the right to obtain tax relief in respect of such an amount of the predecessor's unrelieved trading losses or unrelieved transferred losses as may be specified in, or determined in accordance with, the scheme; and
  - (b) after the relevant date the transferee carries on, or begins to carry on, any trade (whether or not the trade, or a part of the trade, carried on by the predecessor);
- and any reference in this paragraph to a transferred loss is a reference to the amount mentioned in paragraph (a) above.
- (3) The transferee shall be entitled to relief under section 393(1) of the Taxes Act 1988 for the transferred loss, as for a loss sustained by the transferee in carrying on its trade, but the transferred loss may only be set off against trading income of the transferee which arises in an accounting period throughout which the transferee is a public sector railway company.
- (4) Where the transferee ceases to be a public sector railway company, it shall be assumed for the purposes of giving relief by virtue of sub-paragraph (3) above that—
- (a) on the occasion of the cessation (unless a true accounting period of the transferee ends then) an accounting period of the transferee ends and a new one begins, the new accounting period to end with the end of the true accounting period; and
  - (b) the amount of the trading income for the true accounting period of the transferee against which the relief may be allowed is apportioned to the component accounting periods;

and any apportionment under this sub-paragraph shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears

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- that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.
- (5) Relief by virtue of sub-paragraph (3) above in respect of a transferred loss shall be given against the trading income of any accounting period of the transferee before relief is given against that income in respect of losses incurred by the transferee after the relevant date.
- (6) As from the relevant date—
- (a) the amount of the predecessor’s unrelieved transferred losses (if any) shall be regarded for the purposes of this paragraph as reduced by an amount equal to the transferred loss; and
  - (b) if the transferred loss exceeds the amount of the predecessor’s unrelieved transferred losses before the reduction under paragraph (a) above, or if there are no such losses, the predecessor’s unrelieved trading losses shall be regarded for the purposes of the Corporation Tax Acts as reduced by the amount of that excess or, as the case may be, by an amount equal to the transferred loss.
- (7) Without prejudice to the generality of sub-paragraphs (1) and (3) above, if the conditions in subsection (1) of section 343 of the Taxes Act 1988 become satisfied at any time on or after the relevant date in relation to any trade (or, where subsection (8) of that section applies, any part of a trade which falls to be treated for the purposes of that section as a separate trade), the company which is the successor, within the meaning of that section, shall not become entitled to relief by virtue of subsection (3) of that section in respect of any amount for which the company which is the predecessor, within the meaning of that section, would have been entitled to relief by virtue of sub-paragraph (3) above had it continued to carry on the trade (or the part of the trade which falls to be treated as a separate trade).
- (8) Subject to sub-paragraph (9) below, the provisions of a restructuring scheme providing for the determination of the amount which is to be that of any transferred loss may include provision—
- (a) for such a determination to be made by the Secretary of State in such manner as may be described in the scheme;
  - (b) for any amount determined to be calculated by reference to such factors, or to the opinion of such person, as may be so described; and
  - (c) for a determination under those provisions to be capable of being modified, on one or more occasions, in such manner and in such circumstances as may be so described.
- (9) The consent of the Treasury shall be required for the making or modification of a determination of any such amount as is mentioned in sub-paragraph (8) above; and the consent of the transferee shall also be required for any such modification after the coming into force of the relevant transfer.
- (10) Where there is a determination, or a modification of a determination, for any purposes of this paragraph, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments may be made.
- (11) For the purposes of this paragraph, a transferee is at any time a “public sector railway company” if, and only if, it is at that time—
- (a) the Board;

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- (b) a wholly owned subsidiary of the Board;
- (c) a publicly owned railway company; or
- (d) a company wholly owned by the Crown.

(12) In this paragraph—

“the relevant date” means the date on which the transfer mentioned in sub-paragraph (2)(a) above takes effect;

“trading income” has the same meaning as it has in section 393 of the Taxes Act 1988;

“unrelieved trading losses” means any losses—

- (a) which were incurred by the predecessor in carrying on a trade in accounting periods ending before the relevant date, or
- (b) for which the predecessor has, by virtue of section 343(3) of the Taxes Act 1988, become entitled to relief under section 393(1) of that Act,

and which would, apart from the restructuring scheme mentioned in sub-paragraph (2)(a) above, have fallen to be set off under the said section 393(1) against trading income of the predecessor arising in the accounting period in which the relevant date falls;

“unrelieved transferred losses” means so much of a transferred loss as would, apart from the restructuring scheme mentioned in sub-paragraph (2) (a) above, have fallen to be set off under section 393(1) of the Taxes Act 1988, as it applies by virtue of sub-paragraph (3) above, against trading income of the predecessor arising in the accounting period in which the relevant date falls.

(13) It shall be assumed for the purposes of the definitions of “unrelieved trading losses” and “unrelieved transferred losses” in sub-paragraph (12) above (if it is not in fact the case) that the trading income mentioned in those definitions is at least equal to the aggregate amount of the losses in question of each of those descriptions.

*No reduction in allowable losses on extinguishment of certain liabilities*

- 16 Where any of the liabilities of a successor company are extinguished by virtue of section 106(1) of the <sup>M82</sup>Railways Act 1993, section 400 of the Taxes Act 1988 (reduction of allowable losses on write-off of government investment) shall not have effect in relation to any amount of government investment in a body corporate which, apart from this paragraph, would thereby fall to be regarded as written-off for the purposes of that section.

**Marginal Citations**

M82 1993 c. 43.

*Group relief*

- 17 (1) The existence of the powers of the Secretary of State or the Franchising Director under Part II of the Railways Act 1993 shall not be regarded as constituting arrangements falling within subsection (1) or (2) of section 410 of the Taxes Act 1988 (arrangements for the transfer of a company to another group or consortium).

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- (2) Nothing in Part II of the Railways Act 1993, and no direction given by the Secretary of State under or by virtue of any provision of that Part, shall be regarded as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to the Taxes Act 1988.
- (3) Arrangements relating to the transfer, pursuant to any provision of Part II of the Railways Act 1993, of shares of a subsidiary of the Board to—
- (a) the Secretary of State,
  - (b) the Franchising Director,
  - (c) a publicly owned railway company,
  - (d) a company which is wholly owned by the Crown, or
  - (e) a person acting on behalf of a person falling within any of paragraphs (a) to (d) above,
- shall not, so far as so relating, be regarded as constituting arrangements falling within subsection (1)(b)(i) or (ii) of section 410 of the Taxes Act 1988.
- (4) Arrangements relating to the transfer, by virtue of a section 85 transfer scheme, of the whole or any part of a trade carried on by the Board or a wholly owned subsidiary of the Board to—
- (a) a publicly owned railway company, or
  - (b) a company wholly owned by the Franchising Director,
- shall not, so far as so relating, be regarded as constituting arrangements falling within section 410(1)(b)(iii) of the Taxes Act 1988.
- (5) Arrangements relating to the transfer, pursuant to any provision of Part II of the Railways Act 1993, of shares of a subsidiary of the Board, or shares of a company owned by a consortium, to—
- (a) the Secretary of State,
  - (b) the Franchising Director,
  - (c) a publicly owned railway company,
  - (d) a company which is wholly owned by the Crown, or
  - (e) a person acting on behalf of a person falling within any of paragraphs (a) to (d) above,
- shall not, so far as so relating, be regarded as constituting arrangements falling within section 410(2)(b)(ii) of the Taxes Act 1988.
- (6) None of sub-paragraphs (3) to (5) above shall have effect in relation to any arrangements if—
- (a) notwithstanding the provisions of those sub-paragraphs, the arrangements to any extent fall within section 410(1) or (2) of the Taxes Act 1988; or
  - (b) the arrangements form part of a series of subsisting arrangements which to any extent—
    - (i) relate to the transfer of any shares or assets of, or the whole or any part of the trade carried on by, a company to which the first-mentioned arrangements relate, and
    - (ii) notwithstanding the provisions of sub-paragraphs (3) to (5) above, fall within section 410(1) or (2) of the Taxes Act 1988.

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- (7) Section 413(6)(a) of the Taxes Act 1988 (company owned by a consortium) shall have effect for the purposes of sub-paragraph (5) above as it has effect for the purposes of Chapter IV of Part X of that Act.
- (8) In this paragraph—  
“arrangements” has the same meaning as in section 410 of the Taxes Act 1988;  
“shares” includes stock.

*Securities issued under section 98 or 106 of the Railways Act 1993*

- 18 (1) Subject to sub-paragraph (2) below, any shares issued by a relevant company in pursuance of section 98 or 106 of the <sup>M83</sup>Railways Act 1993 (initial share holding in, and extinguishment of certain liabilities of, successor companies) shall be treated for the purposes of the Corporation Tax Acts as if they had been issued wholly in consideration of a subscription paid to that company (and attributable equally between those shares) of an amount equal—
- (a) in the case of shares issued under section 98 of that Act, to the value, as at the transfer date, of the property, rights and liabilities vested in that company in accordance with the transfer scheme mentioned in subsection (1) of that section, or
  - (b) in the case of shares issued under section 106 of that Act, to the amount of the liabilities extinguished by the order under subsection (1) of that section, reduced, in either case, by the principal sum payable under any debentures issued by the company in pursuance of the section in question.
- (2) Where two or more classes of share are issued by a relevant company in pursuance of section 98 or, as the case may be, section 106 of the Railways Act 1993—
- (a) the issued shares of each of those classes shall be valued, as at the day on which, in consequence of section 98(4) or, as the case may be, section 106(5) of that Act, no more shares can be directed to be issued by the company under the section in question;
  - (b) the amount of the consideration mentioned in sub-paragraph (1) above shall be apportioned between those classes of share in proportion to the aggregate value of the issued shares of each of those classes, as determined pursuant to paragraph (a) above; and
  - (c) the portion attributed to any class of share pursuant to paragraph (b) above shall be divided by the number of issued shares of that class, the resulting amount being referred to in the following provisions of this sub-paragraph as the “appropriate price” for a share of that class;
- and each of the issued shares of any of those classes shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to the relevant company of an amount equal to the appropriate price for a share of that class.
- (3) Any debenture issued by a relevant company in pursuance of section 98 or 106 of the <sup>M84</sup>Railways Act 1993 shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and

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- (b) wholly and exclusively for the purposes of the trade or business carried on by that company.
- (4) If any debenture issued as mentioned in sub-paragraph (3) above includes provisions for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.
- (5) The value required to be determined for the purposes of sub-paragraph (1)(a) or (2)(a) above is market value, as defined in section 272 of the Gains Act.
- (6) In this paragraph—  
“company” means a body corporate;  
“relevant company” means a company which is—  
(a) a successor company; or  
(b) in the application of this paragraph in relation to shares or debentures issued pursuant to section 106 of the <sup>M85</sup>Railways Act 1993, the company, or one of the companies, wholly owning (within the meaning of that section) the successor company whose liabilities are extinguished by the order under subsection (1) of that section.

#### Marginal Citations

- M83** 1993 c. 43.  
**M84** 1993 c. 43.  
**M85** 1993 c. 43.

#### *Leased assets*

- 19 (1) For the purposes of section 781 of the Taxes Act 1988 (assets leased to traders and others), where the interest of the lessor or the lessee under a lease, or any other interest in an asset, vests in any person by virtue of a relevant transfer—  
(a) the transfer shall (notwithstanding anything in section 783(4) of that Act) be treated as made without any capital sum having been obtained in respect of that interest by the predecessor or the transferee; and  
(b) in a case where the interest is an interest under a lease, payments made by the predecessor under the lease before the coming into force of the transfer shall be treated as if they had been made under that lease by the transferee.
- (2) No charge shall arise under section 781(1) of the Taxes Act 1988 by virtue of section 783(2) of that Act in a case where the capital sum mentioned in section 781(1)(b)(i) or (ii) of that Act is the consideration obtained (or treated by section 783(4) of that Act as obtained) by the Board on a disposal pursuant to a direction under Part II of the <sup>M86</sup>Railways Act 1993 of securities of a subsidiary of the Board.
- (3) The grant of a lease of an asset—

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- (a) by a person to an associate of his, pursuant to an obligation imposed by a restructuring scheme by virtue of section 91(1)(c) of the <sup>M87</sup>Railways Act 1993,
- (b) by a person to an associate of his, pursuant to paragraph 2 of Schedule 8 to that Act in connection with a restructuring scheme, or
- (c) by the Board, any of the Board's wholly owned subsidiaries, a publicly owned railway company or a company wholly owned by the Franchising Director to an associate of the grantor, pursuant to a direction under that Act,
- shall be treated for the purposes of section 781 of the Taxes Act 1988 (notwithstanding anything in section 783(4) of that Act) as made without any capital sum having been obtained by the grantor.
- (4) No charge shall arise under section 781(1) of the Taxes Act 1988 in a case where the capital sum mentioned in section 781(1)(b)(i) or (ii) of that Act is the consideration obtained (or treated by section 783(4) of that Act as obtained) on a disposal of, or of an interest in, rolling stock by—
- (a) the Board,
- (b) a wholly owned subsidiary of the Board,
- (c) a publicly owned railway company,
- (d) a company wholly owned by the Franchising Director, or
- (e) a body which, at the time when it acquired the rolling stock, fell within paragraph (b), (c) or (d) above,
- in any case where before, at or after the time when the disposal is made the lessee's interest in a lease of the rolling stock has belonged to an associate of the person making the disposal.
- (5) Section 782 of the Taxes Act 1988 (leased assets: special cases) shall not apply to payments made by—
- (a) the Board,
- (b) a wholly owned subsidiary of the Board,
- (c) a publicly owned railway company,
- (d) a company wholly owned by the Franchising Director,
- (e) a successor company, or
- (f) a franchise company,
- under a lease of an asset which at any time before the creation of the lease was used by a body falling within paragraphs (a) to (d) above for the purposes of a trade carried on by that body and which was, when so used, owned by that body.
- (6) Section 781 of the Taxes Act 1988 shall not, by virtue of sub-paragraph (5) above, apply to any payments to which, by virtue of section 782 of that Act, it would not have applied apart from that sub-paragraph.
- (7) In this paragraph—
- “asset” has the meaning given by section 785 of the Taxes Act 1988;
- “associate” shall be construed in accordance with section 783(10) of that Act;
- “capital sum” has the meaning given by section 785 of that Act;
- “lease” has the meaning given by section 785 of that Act;
- “rolling stock” has the meaning given by section 83(1) of the <sup>M88</sup>Railways Act 1993;

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“securities” has the meaning given by section 142 of the <sup>M89</sup>Financial Services Act 1986.

**Marginal Citations**

- M86** 1993 c. 43.  
**M87** 1993 c. 43.  
**M88** 1993 c. 43.  
**M89** 1986 c. 60.

*Continuity in relation to capital allowances etc where trade transferred*

- 20 (1) Subject to the following provisions of this Schedule, where, apart from this paragraph—
- (a) the predecessor would be treated for the purposes of the Corporation Tax Acts as having ceased, by virtue of the coming into force of a relevant transfer, to carry on any trade, and
  - (b) the transferee would be treated as having begun, on the coming into force of that transfer, to carry it on,
- then the trade shall not be treated as permanently discontinued, nor a new trade as set up, for the purposes of the allowances and charges provided for by the Capital Allowances Acts, but sub-paragraphs (2) to (4) below shall apply.
- (2) Subject to sub-paragraphs (3) and (4) below, in a case falling within sub-paragraph (1) above—
- (a) there shall be made to or on the transferee in accordance with the Capital Allowances Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on the predecessor; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the transferee had been carrying on the trade since the predecessor began to do so; and
    - (ii) everything done to or by the predecessor had been done to or by the transferee (but so that the relevant transfer itself, so far as it relates to any assets in use for the purpose of the trade, shall not be treated as giving rise to any such allowance or charge).
- (3) For the purposes of the Corporation Tax Acts, only such amounts (if any) as may be specified in or determined in accordance with the restructuring scheme providing for a relevant transfer shall be allocated to the transferee in respect of expenditure by reference to which capital allowances may be made by virtue of sub-paragraph (2) above in relation to anything to which the transfer relates.
- (4) Sub-paragraph (2) above shall affect the amounts falling to be taken into account in relation to the predecessor as expenditure by reference to which capital allowances may be made only so far as necessary to give effect to a reduction of any such amount by a sum equal to so much of that amount as is allocated to the transferee as mentioned in sub-paragraph (3) above.

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- (5) Subject to sub-paragraph (6) below, the provisions of a restructuring scheme providing for the determination of any amount which for the purposes of sub-paragraph (3) above is to be allocated, in the case of any relevant transfer, to the transferee may include provision—
- (a) for such a determination to be made by the Secretary of State in such manner as may be described in the scheme;
  - (b) for any amount determined to be calculated by reference to such factors or to the opinion of such person as may be so described; and
  - (c) for a determination under those provisions to be capable of being modified, on one or more occasions, in such manner and in such circumstances as may be so described.
- (6) The consent of the Treasury shall be required for the making or modification of a determination of any such amount as is mentioned in sub-paragraph (5) above; and the consent of the transferee shall also be required for any such modification after the coming into force of the relevant transfer.
- (7) This sub-paragraph applies in any case where assets which are the subject of a relevant transfer became vested in the predecessor by virtue of a transfer made by a company; and in any such case—
- (a) if the predecessor held a direct or indirect interest in the company at the time of the transfer by the company, that interest shall be treated for the purposes of sub-paragraph (2)(b)(ii) above as if it had instead been held by the transferee;
  - (b) if the company held a direct or indirect interest in the predecessor at the time of the transfer by the company, the interest which the company held in the predecessor shall be treated for the purposes of sub-paragraph (2)(b)(ii) above as if it had instead been the corresponding interest in the transferee; and
  - (c) if there was a person who, at the time of the transfer by the company, held—
    - (i) a direct or indirect interest in the predecessor, and
    - (ii) a direct or indirect interest in the company,
 the interest which that person held at that time in the predecessor shall be treated for the purposes of sub-paragraph (2)(b)(ii) above as if it had instead been the corresponding interest in the transferee.
- (8) Neither section 343 of the Taxes Act 1988 (company reconstructions without change of ownership) nor section 77 of the Allowances Act (successions to trades: connected persons) shall have effect in a case falling within sub-paragraph (1) above.
- (9) In determining whether sub-paragraph (1) above has effect in relation to a relevant transfer in a case where—
- (a) the predecessor continues to carry on any trade or part of a trade after the coming into force of the transfer, or
  - (b) the transferee was carrying on any trade before the coming into force of the transfer,
- the trade or part of a trade which is continued or, as the case may be, was being carried on shall for the purposes of that sub-paragraph be treated in relation to any trade or part of a trade which is transferred by virtue of the transfer as a separate trade and shall accordingly be disregarded.

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- (10) Where there is a determination, or a modification of a determination, for any purposes of this paragraph, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments may be made.

*Capital allowances in certain cases where paragraph 20 does not apply*

- 21 (1) The Capital Allowances Acts shall have effect in accordance with this paragraph in relation to any property if—
- (a) it is property to which a relevant transfer relates; and
  - (b) paragraph 20 above does not apply in relation to its transfer to the transferee; and in this paragraph “the relevant scheme”, in relation to property to which a relevant transfer relates, means the restructuring scheme that provides for that transfer.
- (2) In any case where—
- (a) subsection (6) of section 21 of the Allowances Act (transfer of industrial buildings or structures to be deemed to be sale at market price) applies on the relevant transfer in relation to the property, and
  - (b) the relevant scheme contains provision for the sale of that property which is deemed to occur by virtue of that subsection to be deemed for the purposes of the Capital Allowances Acts to be at a price specified in or determined in accordance with the scheme,
- that deemed sale shall be treated as a sale at the price so specified or determined (instead of at the price determined by virtue of that subsection or any other provision of those Acts), sections 157 and 158 of the Allowances Act shall not apply and that provision of the scheme shall have an equivalent effect in relation to the expenditure which the transferee is to be treated as having incurred in making the corresponding purchase.
- (3) Where the property is plant or machinery which would, for the purposes of the Capital Allowances Acts, be treated on the coming into force of the relevant transfer as disposed of by the predecessor to the transferee and the relevant scheme contains provision for the disposal value of that property to be deemed for the purposes of those Acts to be of such amount as may be specified in or determined in accordance with the scheme—
- (a) that provision shall have effect, instead of section 26(1) or 59 of the Allowances Act, for determining an amount as the disposal value of the property or, as the case may be, as the price at which any fixture is to be treated as sold;
  - (b) the transferee shall be deemed to have incurred expenditure of that amount on the provision of that property; and
  - (c) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee shall be deemed for the purposes of section 54 of that Act to be incurred by the giving of a consideration consisting in a capital sum of that amount.
- (4) Sub-paragraphs (5) and (6) of paragraph 20 above shall apply in relation to any determination of any amount in accordance with any provision made by a

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restructuring scheme for the purposes of this paragraph as they apply for the purposes of a determination such as is mentioned in those sub-paragraphs.

- (5) Where there is a determination, or a modification of a determination, for any purposes of this paragraph, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments may be made.

*Capital allowances: actual consideration to be the disposal value in certain other cases*

- 22 (1) In this paragraph, “relevant disposal” means—
- (a) a disposal by virtue of a section 85 transfer scheme, other than a restructuring scheme, to the extent that the scheme provides for the transfer of property, rights and liabilities of—
    - (i) the Board,
    - (ii) a wholly owned subsidiary of the Board,
    - (iii) a publicly owned railway company, or
    - (iv) a company which is wholly owned by the Franchising Director,
 to a franchise company or to the Franchising Director;
  - (b) a disposal pursuant to a direction under section 89 of the <sup>M90</sup>Railways Act 1993;
  - (c) a disposal in accordance with directions under section 125 of that Act;
  - (d) a disposal by or pursuant to an agreement or instrument made or executed, transaction effected or direction given under or by virtue of paragraph 2, 3 or 14(2) of Schedule 8 to that Act, in a case where the transfer scheme in question is a section 85 transfer scheme, other than a restructuring scheme; or
  - (e) a disposal pursuant to a requirement imposed under paragraph 7(2)(b) of that Schedule, in a case where the transfer to which that Schedule applies is a transfer by virtue of a section 85 transfer scheme.
- (2) A relevant disposal of the relevant interest in—
- (a) an industrial building or structure, or
  - (b) a qualifying hotel or a commercial building or structure,
- shall be treated for the purposes of Part I of the Allowances Act, and the other provisions of that Act which are relevant to that Part, as a sale of that relevant interest; and sections 157 and 158 of that Act (sales between connected persons or without change of control) shall not have effect in relation to that sale.
- (3) Where there is a relevant disposal of machinery or plant, the amount which, in consequence of that disposal, is to be brought into account as the disposal value of that machinery or plant for the purposes of section 24 of the Allowances Act (balancing adjustments) shall, subject to section 26(2) and (3) of that Act (disposal value of machinery or plant not to exceed capital expenditure incurred on its provision) be taken—
- (a) if consideration is given in respect of the relevant disposal, to be an amount equal to the amount or value of that consideration, or
  - (b) if no such consideration is given, to be nil,
- notwithstanding any other provision of the Capital Allowances Acts.

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- (4) Where, in consequence of a relevant disposal, a fixture is treated by section 57(2) of the Allowances Act as ceasing to belong to a person at any time, the amount which, in consequence of that disposal, is to be brought into account as the disposal value of the fixture for the purposes of section 24 of that Act shall, subject to section 26(2) and (3) of that Act, be taken—
- (a) if consideration is given in respect of the relevant disposal, to be an amount equal to that portion of the amount or value of that consideration which falls (or, if the person to whom the relevant disposal is made were entitled to an allowance, would fall) to be treated for the purposes of Part II of that Act as expenditure incurred by that person on the provision of the fixture, or
  - (b) if no such consideration is given, to be nil,
- notwithstanding any other provision of the Capital Allowances Acts.

#### Marginal Citations

M90 1993 c. 43.

#### *Sale and lease-back: limitation on tax reliefs*

- 23 (1) Section 779 of the Taxes Act 1988 (sale and lease back) shall not apply by virtue of subsection (1) or (2) of that section in any case where the liability of the transferor, or of the person associated with the transferor, is—
- (a) a liability under an access agreement, within the meaning of Part I of the <sup>M91</sup>Railways Act 1993;
  - (b) a liability under an agreement or instrument made or executed—
    - (i) pursuant to an obligation imposed by a restructuring scheme by virtue of section 91(1)(c) of that Act; or
    - (ii) pursuant to paragraph 2 of Schedule 8 to that Act;
  - (c) a liability under an exempt lease; or
  - (d) a liability to pay exempt rent or to make other exempt payments.
- (2) A lease is “exempt” for the purposes of sub-paragraph (1)(c) above if—
- (a) the transfer mentioned in subsection (1) of section 779 of the Taxes Act 1988 is—
    - (i) a transfer by virtue of a restructuring scheme;
    - (ii) a transfer pursuant to an obligation imposed by a restructuring scheme by virtue of section 91(1)(c) of the <sup>M92</sup>Railways Act 1993; or
    - (iii) a transfer pursuant to paragraph 2 of Schedule 8 to that Act; and
  - (b) the lease is granted after that transfer and otherwise than pursuant to—
    - (i) an obligation imposed by a restructuring scheme by virtue of section 91(1)(c) of the <sup>M93</sup>Railways Act 1993; or
    - (ii) paragraph 2 of Schedule 8 to that Act.
- (3) Rent or other payments are “exempt” for the purposes of paragraph (d) of sub-paragraph (1) above if—
- (a) the rent or other payments would, apart from that paragraph, be rent or other payments to which section 779 of the Taxes Act 1988 applies by virtue of subsection (1) or (2) of that section;

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- (b) the transfer mentioned in subsection (1) or, as the case may be, subsection (2) (a) of that section is—
- (i) a transfer by virtue of a restructuring scheme;
  - (ii) a transfer pursuant to an obligation imposed by a restructuring scheme by virtue of section 91(1)(c) of the <sup>M94</sup>Railways Act 1993; or
  - (iii) a transfer pursuant to paragraph 2 of Schedule 8 to that Act; and
- (c) the transaction or series of transactions mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b) of the said section 779 is effected after that transfer.
- (4) In this paragraph “transferor”, “lease” and “rent” have the same meaning as they have in section 779 of the Taxes Act 1988 and “associated” shall be construed in accordance with subsection (11) of that section.

**Marginal Citations**

- M91** 1993 c. 43.  
**M92** 1993 c. 43.  
**M93** 1993 c. 43.  
**M94** 1993 c. 43.

*Sales of land with right to reconveyance*

- 24 No charge to tax shall arise by virtue of section 36 of the Taxes Act 1988 (charge on sale of land with right to reconveyance) where the sale in question is constituted by a disposition to a franchise company—
- (a) by virtue of a transfer scheme;
  - (b) pursuant to an obligation imposed by a transfer scheme by virtue of section 91(1)(c) of the <sup>M95</sup>Railways Act 1993; or
  - (c) pursuant to paragraph 2 of Schedule 8 to that Act.

**Marginal Citations**

- M95** 1993 c. 43.

*Modifications of restructuring scheme*

- 25 (1) Subject to sub-paragraph (2) below, where the effect of a restructuring scheme is modified in pursuance of an agreement or direction under paragraph 2 or 3 of Schedule 8 to the <sup>M96</sup>Railways Act 1993, the Corporation Tax Acts and this Schedule shall have effect as if—
- (a) the scheme originally made had been the scheme as modified; and
  - (b) anything done by or in relation to the preceding holder had, so far as relating to the property, rights or liabilities affected by the modification, been done by or in relation to the subsequent holder.
- (2) A disposal of an asset—
- (a) which is effected in pursuance of an agreement or direction under paragraph 2 of Schedule 8 to the <sup>M97</sup>Railways Act 1993, and

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(b) which is either the grant of a lease of land or the creation of other liabilities and rights over land,

shall be taken for the purposes of corporation tax on chargeable gains, in relation to the person to whom the disposal is made as well as the person making the disposal, to be effected for a consideration such that no gain or loss accrues to the person making the disposal.

(3) Section 171(1) of the Gains Act (transfers within a group) shall not apply where the disposal in question falls within sub-paragraph (2) above.

(4) Any reference in sub-paragraph (1) or (2) above to an agreement or direction under paragraph 2 or 3 of Schedule 8 to the <sup>M98</sup>Railways Act 1993 includes a reference to such an agreement or direction as varied in accordance with a direction given by the Secretary of State under paragraph 14(2) of that Schedule.

(5) For the purposes of sub-paragraph (1)(b) above—

“the preceding holder” means the person who without the modification in question—

(a) became, by virtue of the restructuring scheme in question, entitled or subject to the property, rights or liabilities affected by the modification, or

(b) remained, notwithstanding the restructuring scheme in question, entitled or subject to the property, rights or liabilities affected by the modification,

as the case may be;

“the subsequent holder” means the person who, in consequence of the modification in question, becomes, or resumes being, entitled or subject to the property, rights or liabilities affected by the modification.

#### **Marginal Citations**

**M96** 1993 c. 43.

**M97** 1993 c. 43.

**M98** 1993 c. 43.

#### *Income tax exemption for certain interest*

26 Where liability for a loan made to the Board is vested in a successor company by virtue of a section 85 transfer scheme, the vesting shall not affect any direction given, or having effect as if given, by the Treasury under section 581 of the Taxes Act 1988 (income tax exemption for interest on foreign currency securities) in respect of the loan.

#### *Employee benefits: transport vouchers*

27 (1) This paragraph applies to any person (an “eligible person”)—

(a) who on 11th January 1994 was in the employment of—

(i) the Board,

(ii) a wholly owned subsidiary of the Board, or

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- (iii) any other subsidiary of the Board which, at that date, was a passenger transport undertaking; and
- (b) who at that date was provided, or was eligible to be provided, by reason of that employment, with a transport voucher falling within subsection (6) of section 141 of the Taxes Act 1988 (exclusion of subsection (1) of that section in relation to certain transport vouchers);
- but this sub-paragraph is subject to sub-paragraph (2) below.
- (2) This paragraph shall not apply, or shall cease to apply, to a person if, on or after 11th January 1994, any of the following conditions became or becomes satisfied in his case, that is to say—
- (a) he ceases, otherwise than—
- (i) by virtue of anything done under or by virtue of, or pursuant to, the <sup>M99</sup>Railways Act 1993, or
- (ii) by virtue of any other enactment or statutory instrument, in consequence of anything so done,
- to be in the employment of a person falling within sub-paragraph (i) or, as the case may be, sub-paragraph (ii) or (iii) of sub-paragraph (1)(a) above;
- (b) he is not in the employment of any person engaged in the railway industry; or
- (c) the continuity of the period of his employment is broken.
- (3) Subsection (6) of section 141 of the Taxes Act 1988 shall, if and so long as the conditions in sub-paragraph (4) below are satisfied, have effect in relation to a transport voucher provided for an eligible person, notwithstanding—
- (a) that the employer of the eligible person does not fall to be regarded as a passenger transport undertaking;
- (b) that the arrangements under which the transport voucher is provided were not in operation on 25th March 1982; or
- (c) that the passenger transport services which may be obtained by means of the transport voucher are provided, in whole or in part, otherwise than as mentioned in paragraphs (a) to (d) of that subsection;
- but this sub-paragraph is subject to sub-paragraph (2) above.
- (4) The conditions mentioned in sub-paragraph (3) above are—
- (a) that the eligible person is in the employment of an employer engaged in the railway industry;
- (b) that the transport voucher is provided by reason of the eligible person's being in the employment of such an employer;
- (c) that the transport voucher is intended to enable the eligible person or a relation of his to obtain passenger transport services; and
- (d) that the current transport voucher benefits in the case of the eligible person are not significantly better than the former transport voucher benefits for comparable employees.
- (5) The Secretary of State may, with the consent of the Treasury, by order prescribe for any purposes of this paragraph circumstances—
- (a) in which a person who ceases, or ceased, as mentioned in sub-paragraph (2) (a) above to be in the employment there mentioned shall be treated—
- (i) as if he had not ceased to be in that employment, or
- (ii) as if he had not so ceased to be in that employment;

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- (b) in which a person shall be treated for a period during which he is not or was not in the employment of any person engaged in the railway industry as if he were or had been in the employment of such a person;
  - (c) in which a break in the continuity of a person's period of employment shall be disregarded; or
  - (d) in which a transport voucher shall be treated as if it were, or had been, provided for a person by reason of his being in the employment of an employer engaged in the railway industry.
- (6) The employers who are to be regarded for the purposes of this paragraph as “engaged in the railway industry” are those who carry on activities of a class or description specified for the purposes of this sub-paragraph in an order made by the Secretary of State with the consent of the Treasury; and the Secretary of State may so specify any class or description of activity which, in his opinion, falls within, or is related to or connected with, the railway industry.
- (7) Any power to make an order under this paragraph shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment pursuant to a resolution of the House of Commons.
- (8) In determining for the purposes of sub-paragraph (4)(d) above whether the current transport voucher benefits in the case of an eligible person are not significantly better than the former transport voucher benefits for comparable employees, regard shall be had, in particular, to—
- (a) the passenger transport services which may be, or (as the case may be) might have been, obtained by means of transport vouchers under the arrangements in question,
  - (b) whether, and (if so) the extent to which, free or concessionary travel is or (as the case may be) was available under those arrangements,
  - (c) the rate of any discount to the standard fare which is or (as the case may be) was available in the case of concessionary travel under those arrangements, and
  - (d) any limitations on the availability or use of transport vouchers under the arrangements in question.
- (9) Apart from paragraph 18, so much of Schedule 13 to the <sup>M100</sup>Employment Protection (Consolidation) Act 1978 as has effect for the purpose of ascertaining whether any period of employment is continuous shall apply for the purposes of this paragraph as it applies for the purposes of that Act, <sup>F76</sup>. . .
- <sup>F77</sup>(10) . . . . .
- (11) Expressions used in sub-paragraph (9) <sup>F78</sup>. . . above and in Schedule 13 to the <sup>M101</sup>Employment Protection (Consolidation) Act 1978 have the same meaning in that sub-paragraph as they have in that Schedule.
- (12) In this paragraph—
- “the current transport voucher benefits”, in the case of an eligible person, means the totality of the benefits which, by reason of his employment by an employer engaged in the railway industry, are available in the year in question—
- (a) to the eligible person, and
  - (b) to relations of his,

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by way of transport voucher under the arrangements under which the transport voucher in question is provided;

“the former transport voucher benefits for comparable employees”, in the case of an eligible person, means the totality of the benefits which would, by reason of the employment by the Board of a person of similar status to the eligible person (“the comparable person”), have been available in the year 1993-94—

- (a) to the comparable person, and
- (b) to relations of his,

by way of transport voucher under arrangements in operation on 25th March 1982.

(13) Subject to paragraph 1(1) and sub-paragraphs (11) and (12) above, expressions used in this paragraph and in section 141 of the Taxes Act 1988 have the same meaning in this paragraph as they have in that section.

(14) This paragraph has effect—

- (a) in relation to transport vouchers received by an employee on or after 11th January 1994; and
- (b) in relation to expense incurred on or after that date in, or in connection with, the provision of—
  - (i) any transport voucher, or
  - (ii) the money, goods or services for which it is capable of being exchanged,

irrespective of when the transport voucher falls to be regarded as received by the employee in question.

#### Textual Amendments

**F76** Words in [Sch. 24 para. 27\(9\)](#) repealed (6.2.1995) by [S.I. 1995/31, reg. 6, Sch.](#)

**F77** [Sch. 24 para. 27\(10\)](#) repealed (6.2.1995) by [S.I. 1995/31, reg. 6, Sch.](#)

**F78** Words in [Sch. 24 para. 27\(11\)](#) repealed (6.2.1995) by [S.I. 1995/31, reg. 6, Sch.](#)

#### Marginal Citations

**M99** 1993 c. 43.

**M100** 1978 c. 44.

**M101** 1978 c. 44.

## SCHEDULE 25

Section 253.

### NORTHERN IRELAND AIRPORTS LIMITED

#### *Interpretation*

1 (1) In this Schedule—

“the final accounting period” means the last complete accounting period of NIAL ending before the transfer date;

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“the Holding Company” means the Northern Ireland Transport Holding Company established under section 47 of the <sup>M102</sup>Transport Act (Northern Ireland) 1967;

“NIAL” means the subsidiary of the Holding Company incorporated under the name of Northern Ireland Airports Limited;

“the Order” means the <sup>M103</sup>Airports (Northern Ireland) Order 1994 and any reference to an Article is to an Article of the Order;

“the successor company” means the company nominated under Article 51(1) as the successor company for the purposes of the Order;

“the transfer date” means the day appointed under Article 54(2);

“the transferred trade” means the trade carried on by NIAL and transferred under Article 54(2) to the successor company.

- (2) This Schedule, so far as it relates to corporation tax on chargeable gains, shall be construed as one with the <sup>M104</sup>Taxation of Chargeable Gains Act 1992.

#### Marginal Citations

M102 1967 c. 37 (N.I.).

M103 S.I. 1994/426 (N.I.).

M104 1992 c. 12.

#### *Transfers from NIAL to successor company: general*

- 2 (1) The following shall apply for the purposes of the Corporation Tax Acts—
- the transferred trade shall be treated as having been, at the time when it began to be carried on by NIAL and at all times since that time, a separate trade carried on by the successor company;
  - the trade carried on by the successor company on and after the transfer date shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried on before that date;
  - all property, rights and liabilities of NIAL which are transferred under Article 54(2) to the successor company shall be treated as having been, at the time when they became vested in NIAL and at all times since that time, property, rights and liabilities of the successor company; and
  - anything done by NIAL in relation to any property, rights and liabilities which are transferred under Article 54(2) to the successor company shall be deemed to have been done by the successor company.
- (2) This paragraph shall have effect in relation to accounting periods beginning after the final accounting period.

#### *Roll-over relief*

- 3 (1) This paragraph applies where NIAL has, before the transfer date, disposed of (or of its interest in) any assets used, throughout the period of ownership, wholly or partly for the purposes of the transferred trade.
- (2) Sections 152 to 156 of the <sup>M105</sup>Taxation of Chargeable Gains Act 1992 (roll-over relief on replacement of business assets) shall have effect in relation to that disposal as if NIAL and the successor company were the same person.

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#### Marginal Citations

M105 1992 c. 12.

#### *Transfers from Holding Company to successor company*

- 4 (1) This paragraph applies where under Article 54(2) an asset of the Holding Company is transferred to the successor company.
- (2) The disposal of the asset by the Holding Company shall be taken for the purposes of corporation tax on chargeable gains to be effected for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the Holding company.
- (3) In section 35(3)(d) of the Taxation of Chargeable Gains Act 1992 after subparagraph (ix) there shall be inserted—
- “(x) paragraph 4(2) of Schedule 25 to the Finance Act 1994.”

#### *Leasehold interests in industrial buildings or structures*

- 5 (1) This paragraph applies where—
- (a) NIAL is entitled, under a lease granted by the Holding Company, to a leasehold interest in a building or structure,
  - (b) by virtue of Article 52(2)(b) that interest is deemed to have been surrendered by NIAL,
  - (c) under Article 52(3) the Holding Company and NIAL enter into a lease under which NIAL is entitled to a leasehold interest (“the new interest”) in the property, and
  - (d) under Article 54(2) that interest is transferred to the successor company.
- (2) For the purposes of the 1990 Act—
- (a) the surrender shall be deemed to be for such an amount (by way of sale, insurance, salvage or compensation moneys) as would secure that no balancing allowance or balancing charge would be made to or on NIAL by reason of the surrender (“the surrender value”);
  - (b) the successor company shall be treated for the purposes of the 1990 Act—
    - (i) as if the new interest were the relevant interest in relation to the capital expenditure incurred on the construction of the property; and
    - (ii) as if the amount of the residue of that expenditure immediately after the transfer of the new interest were equal to the surrender value.
- (3) In this paragraph—
- “the 1990 Act” means the <sup>M106</sup>Capital Allowances Act 1990;
- “balancing allowance” and “balancing charge” have the same meanings as in section 4 of the 1990 Act;
- “the property” means the building or structure referred to in subparagraph (1); and
- “relevant interest” has the same meaning as in section 20 of the 1990 Act.

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#### Marginal Citations

M106 1990 c. 1.

#### *Securities of successor company*

- 6 (1) Any share issued by the successor company under Article 57 shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to the company of an amount equal to the nominal value of the share.
- (2) Any debenture issued by the successor company under Article 57 shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to the company of an amount equal to the principal sum payable under the debenture, and
  - (b) wholly and exclusively for the purposes of the trade carried on by the company.
- (3) If any such debenture includes provision for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.

## SCHEDULE 26

Section 258.

### REPEALS

#### PART I

#### VEHICLES EXCISE DUTY

#### Commencement Information

**I4** Sch. 26 Pt. I in force at Royal Assent except for the repeals at (2) which come into force at 1.6.1994

#### (1) Rates

Chapter	Short title	Extent of repeal
1971 c. 10.	The Vehicles (Excise) Act 1971.	In Schedule 1, in Part I, paragraph 4(a). In Schedule 2, in Part I, paragraphs 3 and 5. In Schedule 4, paragraph 6(6) (a), (c) and (d).

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1985 c. 54.	The Finance Act 1985.	Section 4(4).
1991 c. 31.	The Finance Act 1991.	In Schedule 3, in Part I, paragraph 21.
1993 c. 34.	The Finance Act 1993.	Section 17(3)(a) and (7)(b). Section 20(3).

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These repeals have effect in relation to licences taken out after 30th November 1993.

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### **(2) Transitional modifications**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1971 c. 10.	The Vehicles (Excise) Act 1971.	In section 2A(1), the words “(other than licences for one calendar year)”.  In Schedule 7, in Part I, paragraphs 1(c), 3(b), 18, 19, 21, and 22 and, so far as it relates to section 26(2), paragraph 23.
1988 c. 54.	The Road Traffic (Consequential Provisions) Act 1988.	In Schedule 2, in Part III, paragraph 23.

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These repeals come into force on 1st June 1994.

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### **(3) Other provisions**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1971 c. 10.	The Vehicles (Excise) Act 1971.	Section 1(4).  In section 3(3), the words “the restoration of any forfeiture and”. Section 4(3)(a).
1971 c. 10. (contd.)	The Vehicles (Excise) Act 1971. (contd.)	In section 16(4), the words following paragraph (b).  In section 18, subsections (8) and (9) and, in subsection (10), paragraph (b) and the word “and” immediately preceding it. Section 21.  In section 22, in subsection (1), the words “or sign to be exhibited”, “or 21”

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and “or exhibited” and, in subsection (2), the words “or sign exhibited” and “or sign”.

In section 23, as set out in paragraph 20 of Part I of Schedule 7, in subsection (1) (f), the words “or the signs” and “or signs”.

In section 25, in subsection (1), in paragraph (a), the words “temporary licences or” and, in paragraph (b), the words from the beginning to “allocated to the dealer in pursuance of this Act or” and, in subsection (2), the words “requirement or” (in both places).

In section 26, in subsection (1), the words “or sign to be exhibited” and “or 21” and, in subsection (2) (a), the words “temporary licences or”.

In section 28(1), “11(2),”.

In section 29(4), “11(2),”.

In section 35(2), the words “and forfeitures” (in both places).

Section 36.

In section 37—in subsection (3), as set out in paragraph 22 of Part I of Schedule 7, “2(5), 11(3), 14,” in subsection (3A), as so set out, “14,” and “14 or”, and in subsection (4), “11(3), 14, 15(1), 17(1),”.

In Schedule 4, paragraph 5 and, in paragraph 15(1), in the definition of “goods vehicle”, the words “(including a tricycle as defined in Schedule 1 to this Act and weighing more than 425 kilograms unladen)”.

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Finance Act 1994 is up to date with all changes known to be in force on or before 08 August 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. (See end of Document for details)*

1976 c. 40.	The Finance Act 1976.	In section 11, in subsection (2)(c), the words “or, if it falls” onwards and subsection (5).  In section 12(2)(a), the words “either” and “, or elsewhere”.
1983 c. 28.	The Finance Act 1983.	In Schedule 3, in Part II, paragraph 9.
1986 c. 41.	The Finance Act 1986.	In Schedule 2, in Part I, in paragraph 4, in sub-paragraph (5), in paragraph (a), the words “, including those words where they appear in the subsection as set out in paragraph 12 of Part I of Schedule 7,” and paragraph (c) and sub-paragraph (7)(b).
1987 c. 16.	The Finance Act 1987.	In Schedule 1, in Part III, paragraphs 16(2) and 18(2) and (3).
1988 c. 53.	The Road Traffic Offenders Act 1988.	In Schedule 5, the entry relating to the Vehicles (Excise) Act 1971.
1988 c. 54.	The Road Traffic (Consequential Provisions) Act 1988.	In Schedule 3, paragraph 15.
1990 c. 29.	The Finance Act 1990.	In Schedule 2, in Part II, paragraph 6(1) to (3).
1991 c. 31.	The Finance Act 1991.	In Schedule 3, Part II.
1993 c. 34.	The Finance Act 1993.	In section 19(2), the words “including that subsection as set out in paragraph 12 of Part I of Schedule 7”.

## PART II

### GAMING MACHINE LICENCE DUTY

#### Commencement Information

**I5** [Sch. 26 Pt. II](#): repeals have effect in accordance with Sch. 3 (with appropriate commencement dates)

Chapter	Short title	Extent of repeal
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*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Finance Act 1994 is up to date with all changes known to be in force on or before 08 August 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. (See end of Document for details)*

1981 c. 63.	The Betting and Gaming Duties Act 1981.	Section 21A.  Section 22(5).  In section 24, subsection (2), in subsections (3) and (4) the word “such”, in subsection (3) the words from “but” to the end, in subsection (4) the words “or there are special licences in force with respect to those machines” and in subsection (6)(a) the words from “or” at the end of subparagraph (i) to “greater”.  In section 26, in subsection (4) the words “section 22(5) or”.  In Schedule 4, paragraphs 9, 10 and 11A.
1982 c. 39.	The Finance Act 1982.	In Schedule 6, paragraphs 9, 11 and 15.
1984 c. 43.	The Finance Act 1984.	In Schedule 3, paragraphs 3 to 5, 6(b) to (d) and (f), 7(3) to (7) and (9) to (11).
1985 c. 54.	The Finance Act 1985.	In Schedule 5, paragraphs 2, 3(1) and 9(1).
1987 c. 16.	The Finance Act 1987.	Section 4.  Section 5(1), (4) and (5).
1993 c. 34.	The Finance Act 1993.	Section 15.  In section 16, subsections (4) (b) and (5).

These repeals have effect in accordance with Schedule 3 to this Act.

### PART III

#### EXCISE DUTIES: ENFORCEMENT AND APPEALS

Chapter	Short title	Extent of repeal
1979 c. 2.	The Customs and Excise Management Act 1979.	Section 111(2).

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*Status: Point in time view as at 01/04/1996.*

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		In section 113(4), the words from “and the trader” onwards.
		Section 116A.
		Section 127.
1979 c. 4.	The Alcoholic Liquor Duties Act 1979.	Section 13(4).
		Section 15(8).
		Section 19(3).
1979 c. 7.	The Tobacco Products Duty Act 1979.	Section 8(3).
1981 c. 35.	The Finance Act 1981.	In Schedule 8— (a) in paragraph 2(d), paragraph (ii) and the word “and” immediately preceding it; (b) paragraph 7; (c) in paragraph 12, in sub-paragraph (b), the words from “and after” onwards and sub-paragraph (c); (d) in paragraph 14, the words from “and after” in sub-paragraph (c) to the end of sub-paragraph (d); and (e) in paragraph 15, sub-paragraph (c) and the word “and” immediately preceding it.
1981 c. 63.	The Betting and Gaming Duties Act 1981.	In section 24(5), the words after paragraph (f).  In Schedule 1— (a) paragraph 11; (b) in paragraph 14(3), the word “reasonably”; and (c) in paragraph 15(1), the words from “(not being” to “9 above)”.  In Schedule 2, paragraph 5 and, in paragraph 7(6), the words “(1) or”.  In Schedule 3, paragraphs 14 and 16(4).  In Schedule 4, paragraph 16(2).

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1985 c. 54.	The Finance Act 1985.	In Schedule 5, paragraph 9(2).
1989 c. 26.	The Finance Act 1989.	Section 15.
1992 c. 48.	The Finance (No. 2) Act 1992.	In Schedule 2, paragraph 2(6).

Section 19 of this Act applies to these repeals as it applies to Chapter II of Part I of this Act.

#### PART IV

##### VALUE ADDED TAX

Chapter	Short title	Extent of repeal
1985 c. 54.	The Finance Act 1985.	In section 20(2)(a) the words “one month after”.

This repeal has effect in accordance with section 46 of this Act.

#### PART V

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

#### (1) Reliefs

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 257BB(6).  In section 257D(5)(d), the words “section 257A and”.  In section 265(3)(b), the words from “section 257A” to “or under”.  In section 347B(2), the words “Notwithstanding section 347A(1)(a) but”.
1988 c. 39.	The Finance Act 1988.	In Schedule 3, paragraph 33.
1992 c. 48.	The Finance (No. 2) Act 1992.	In Schedule 5, paragraph 8(2).

The repeals in section 347B of the Income and Corporation Taxes Act 1988 and in the Finance Act 1988 have effect in relation to payments becoming due on or after 6th April 1994 and the other repeals have effect in accordance with section 77(7) of this Act.

#### (2) Interest relief

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Finance Act 1994 is up to date with all changes known to be in force on or before 08 August 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. (See end of Document for details)*

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 257D(8)(a).  Section 265(3)(a). Section 353(4) and (5).
1991 c. 31.	The Finance Act 1991.	Section 27(1) to (5) and (7).
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 6(1), the words “353(4), 369(3A)”, the words “certain interest etc. and” and paragraph (a).
1992 c. 48.	The Finance (No. 2) Act 1992.	In section 19, in subsection (3), the words “353(5), 369(3B)” and subsection (5).
1993 c. 34.	The Finance Act 1993.	Section 57(7).  In Schedule 6, in paragraph 1, the words “353(5), 369(3B)”.

These repeals have effect in accordance with section 81(6) of this Act.

### **(3)Medical insurance**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c.1.	The Income and Corporation Taxes Act 1988.	In section 257D(8), paragraph (d).  In section 265(3), paragraph (d).
1989 c.26.	The Finance Act 1989.	In section 55, in subsection (2) paragraph (e) and the word “and” immediately preceding it, and subsections (3) to (6).

(1) The repeals in the Income and Corporation Taxes Act 1988 have effect in accordance with paragraph 3 of Schedule 10 to this Act.

(2) The repeals in the Finance Act 1989 have effect in accordance with paragraph 5 of that Schedule.

### **(4)Vocational training**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1991 c. 31.	The Finance Act 1991.	In section 32(10), the words after paragraph (b).

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This repeal comes into force in accordance with section 84(4) of this Act.

#### **(5) Beneficial loans**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 160(4), the words from “and Part III” to the end. Section 167(2A). Section 191B(14). In Schedule 7, in paragraph 1(5) the words “his employer, being” and Parts III to V.
1991 c. 31.	The Finance Act 1991.	Section 31. In Schedule 6, paragraphs 2 and 5.

These repeals have effect in accordance with section 88(5) of this Act.

#### **(6) Vouchers**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 141(1), the words following paragraph (b).

#### **(7) Relief on re-investment**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 164A, in subsection (2) the words “Subject to section 164C”, and subsections (3) to (7) and (11). Sections 164C to 164E. In section 164F, in subsection (5)(a) the words “or 164D” and in subsection (10) the words “(within the meaning of section 164D)”. In section 164H(1), the words “within the meaning of section 164C”.

These repeals have effect in accordance with section 91(2) of this Act.

#### **(8) Indexation allowance**

*Status: Point in time view as at 01/04/1996.*

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<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 56(1)(a), the words “or loss”. Section 103. Section 111. Sections 182 to 184. Section 200. In Schedule 7A, in paragraph 2(4) the words “except in relation to the calculation of any indexed rise”, in paragraph 2(9) the definition of “indexed rise”, in paragraph 4(12) the words from “together” to the end and paragraph 4(13).
1993 c. 34.	The Finance Act 1993.	In Schedule 17, paragraph 8.

These repeals have effect in accordance with section 93(11) of this Act.

#### **(9) Commodity and financial futures**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	Section 143(4).

This repeal has effect in accordance with section 95(2) of this Act.

#### **(10) Settlements with foreign element: information**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1970 c. 9.	The Taxes Management Act 1970.	In the Table in section 98, in the second column the entry relating to paragraphs 11 to 14 of Schedule 5 to the Taxation of Chargeable Gains Act 1992.
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule 5, paragraphs 11 to 14.

These repeals have effect in accordance with section 97 of this Act.

#### **(11) Profit sharing schemes**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In Schedule 10, in paragraph 3 the words from “In this

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paragraph” to the end of the paragraph.

## (12) Retirement benefits schemes

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 188(1), paragraph (c). In section 189, paragraph (b). In section 591(2)(g) the words “approved by the Board and”. Section 605(1) and (2). In section 612(1), the definition of “administrator”.

- (1) The repeals in sections 188 and 189 have effect in accordance with section 108 of this Act.
- (2) The repeal in section 591 has effect in accordance with section 107 of this Act.
- (3) The repeal of section 605(1) and (2) has effect in accordance with section 105 of this Act.
- (4) The repeal in section 612(1) has effect in accordance with section 103 of this Act.

## (13) Authorised unit trusts

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 468, subsection (2), and in subsection (6) the definition of “distribution period”. Sections 468F and 468G.
1993 c. 34.	The Finance Act 1993.	In Schedule 6, paragraphs 4, 5 and 25(2).

These repeals have effect in accordance with section 111 of and Schedule 14 to this Act.

## (14) Manufactured payments

Chapter	Short title	Extent of repeal
1988 c.1.	The Income and Corporation Taxes Act 1988.	In paragraph 5 of Schedule 23A, in subparagraphs (2) and (4) the word “and” at the end of paragraph (b).

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These repeals have effect in accordance with section 123 of this Act.

### **(15) Controlled Foreign Companies**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In paragraph 2 of Schedule 25, in sub-paragraph (1), in paragraph (a) the words “or for some other period which, in whole or in part, falls within that accounting period” and the words following paragraph (d), and sub-paragraph (2).

These repeals have effect in accordance with section 134(5) of this Act.

### **(16) Repeals connected with foreign income dividends**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 434(6A) the word “and” at the end of paragraph (a).  In section 438(6) the words from “being” to “that profit.”.  In section 731(9), in the definition of “interest” the words from “and in applying” to the end of paragraph (b).

### **(17) Enterprise investment scheme**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 257D(8)(b), the words “or under section 289”.  In section 265(3)(b), the words “or under section 289”.  In section 290A, subsection (10) and, in subsection (11), the definition of “prospectus”.  In section 293, subsection (4) and subsections (9) to (11).  Section 296(6).  In section 297, in subsection (1) the words “(6)

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		and” and in subsection (2) paragraphs (h) and (j).
		In section 298, in subsection (5) the definition of “property development” and subsections (6) to (8).
		Section 301(1), (2) and (7).
		Section 303(8), (10) and (11).
		In section 306(10), the second sentence.
		In section 307, in subsection (1) the words from “but” to the end and subsection (9).
		Section 308(6).
		Section 309.
		Section 310(10) and (11).
		In section 312, in subsection (1) the definitions of “fixed-rate preference share capital” and “the relevant period”.
1988 c. 39.	The Finance Act 1988.	Section 50. Schedule 4.
1990 c. 29.	The Finance Act 1990.	Section 73.
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 231(1)(d) the words “(business expansion scheme)”.
1992 c. 48.	The Finance (No. 2) Act 1992.	Sections 38 to 40.

These repeals have effect in relation to shares issued on or after 1st January 1994.

### **(18) Deduction from income**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 808 the words “In this section “securities” includes stocks and shares.”

This repeal has effect in accordance with section 140 of this Act.

### **(19) Qualifying lenders**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
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1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 376(5).  In section 379, the words “except in section 376(4) and (5)”.  In section 828(4), “376(5)”.
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#### **(20) Premiums referred to pension business**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 431(4), in paragraph (d) the words “approved by the Board and” and in paragraph (e) the words “approved by the Board”.

These repeals have effect in accordance with section 143 of this Act.

#### **(21) Business donations**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1990 c. 29.	The Finance Act 1990.	Section 75.

#### **(22) Minor corrections**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1965 c. 25.	The Finance Act 1965.	Section 87. Schedule 21.
1966 c. 18.	The Finance Act 1966.	In Schedule 5, paragraph 19. In Schedule 6, paragraph 23.
1970 c. 9.	The Taxes Management Act 1970.	In Schedule 4, paragraph 6.
1970 c. 10.	The Income and Corporation Taxes Act 1970.	In Schedule 15, in Part I of the Table in paragraph 11, the entry relating to the Finance Act 1966.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 43(1), the words “or IV”.  In section 271— (a) in subsection (1)— (i) the words “or contract”, wherever they occur, (ii) in paragraph (b), the words “or the contract was made after that date”, and

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(iii) in paragraph (c), the words “or, as the case may be, the body with which the contract was made”, and (b) in subsection (2), paragraph (b) and the word “or” immediately preceding it.  
Section 614(1).  
In Schedule 11, in paragraph 8(b), the words “Chapter II of Part I of the 1968 Act or”.

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The repeals in sections 43 and 271 of, and Schedule 11 to, the Income and Corporation Taxes Act 1988 have effect in accordance with Schedule 17 to this Act.

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**(23) Management: self-assessment etc.**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1970 c. 9.	The Taxes Management Act 1970.	In section 11(1), the words “inspector or other”. Section 11A. In section 12, subsections (1) and (4). In section 33(2), the proviso. In section 95(3), the words from “and the references” to the end. Section 118(3).
1975 c. 45.	The Finance (No. 2) Act 1975.	Section 67(1).
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 5. Section 10. In section 203(2)(dd), the words from “(being not less” to “due”. Section 478. In section 824, subsection (5), in subsection (9), the words “a partnership” and the words “(within the meaning of section 111 of the Finance Act 1989)”, and subsection (10).



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from “except that” to the end,  
and subsection (4).

In section 115, subsections  
(1) to (3) and (6).

In section 277, in  
subsection (1), the words  
“Subject to subsection (2)  
below”, paragraph (c) and  
the word “and” immediately  
preceding that paragraph, and  
subsection (2).

Section 380(3).

Section 381(6).

Section 383.

In section 384, 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)”, in subsection (2),  
the words “or an allowance  
in respect of expenditure  
incurred”, paragraph (b) and  
the word “or” immediately  
preceding that paragraph, and  
subsection (5).

In section 385, subsections  
(2), (3), (5) and (8).

Section 386(4).

In section 388, 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”.

In section 389, subsections  
(3) and (5) to (7).

In section 397(1), the words  
from “and where” to the end.

In section 521, in subsections  
(1) and (2), the words “or its  
basis period”.

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1990 c. 1.	The Capital Allowances Act 1990.	<p>In section 528(1), the words “or its basis period”.</p> <p>In section 530, in subsections (4) and (5), the words “or its basis period”.</p> <p>In section 804(8), 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”.</p> <p>In section 3, in subsections (1) and (2B) to (4), the words “or its basis period”, in each place where they occur.</p> <p>In section 4(10), the words “or of which the basis periods end on or before that date”.</p> <p>In section 7, in subsections (2) and (3), the words “or its basis period”.</p> <p>In section 8, in subsection (3), the words “or its basis period”, and in subsection (5), in paragraph (a), the words from “or” to the end.</p> <p>In section 9(3), the words “or its basis period”.</p> <p>In section 19(3), the words “or its basis period”, in each place where they occur.</p> <p>In section 21(8), the words “or its basis period”.</p> <p>In section 23(2), the words “or its basis period”.</p> <p>In section 24, in subsections (6), (6A) and (7), the words “or its basis period”, in each place where they occur.</p> <p>In section 25, in subsections (1) and (7), the words “or its basis period”.</p>
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In section 33(3), the words “or, as the case may be, in its basis period”.

In section 37, in subsections (2) and (9), the words “or its basis period”, in subsection (5), the words “or, as the case may be, in its basis period” and, in subsection (6), the words “or in the basis period for which”.

In section 42(4), the words “or in the basis period for which”.

In section 46(1), the words “or in the basis period for which”.

In section 47(1), the words “or in the basis period for which”.

In section 48, in subsections (3), (4) and (5), the words “or its basis period”.

In section 49(2), the words “or its basis period”.

In section 61(5), the words “or its basis period”.

In section 62A(6), the words “or its basis period”.

In section 67(6), the words “or its basis period”.

In section 73(3), the words “or its basis period”.

In section 79, in subsections (3) and (5), the words “or its basis period”, in each place where they occur.

In section 85, in subsections (1), (3) and (4), the words “or its basis period”, in each place where they occur.

In section 87(6), the words “or of which the basis periods end on or before that date”.

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		In section 93(3), the words “or its basis period”.
		In section 99, in subsections (1) and (4), the words “or its basis period”.
		In section 101, in subsections (2) and (6) to (8), the words “or its basis period”.
		In section 121(4), the words “or its basis period” and the words “or, as the case may be, its basis period”.
		In section 124(3), the words “or its basis period”.
		In section 126(2), the words “or its basis period”, in each place where they occur.
		In section 128(1), the words “or its basis period”.
		In section 129(3), the words “or the basis periods for which”.
		In section 134(1), the words from “but where a writing-down allowance” to the end.
		In section 138(7), the words “or its basis period”.
		In section 148(7), the words “or its basis period”.
		In section 159, in subsections (4) and (6), the words “or its basis period”.
		In section 159A(4), the words “or its basis period”.
1991 c. 31.	The Finance Act 1991.	In section 72(8), the words “383(6), (7) and (8)”.
1994 c. 9.	The Finance Act 1994.	In section 118(6), the words “or its basis period”.

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- (1) The repeal in section 65(3) of the Income and Corporation Taxes Act 1988 has effect in accordance with sections 207(6) and 218(1)(b) of this Act.
- (2) The repeal in section 96(6) of the Income and Corporation Taxes Act 1988 has effect in accordance with section 216(5) of this Act.

*Status: Point in time view as at 01/04/1996.*

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- (3) The repeal in section 96(7) of the Income and Corporation Taxes Act 1988 has effect in accordance with section 214(7) of this Act.
- (4) The following repeals, namely—
- (a) the repeals in sections 113, 114, 115, 277, 380, 381 and 386 of the Income and Corporation Taxes Act 1988;
  - (b) the repeal of subsection (5) of section 384 of that Act;
  - (c) the repeal of subsections (2) and (5) of section 385 of that Act; and
  - (d) the repeal of subsection (3) of section 389 of that Act,
- have effect in accordance with section 215(4) of this Act.
- (5) The following repeals, namely—
- (a) the repeals in sections 384(1) and (2), 388, 397, 521, 528 and 530 of the Income and Corporation Taxes Act 1988;
  - (b) the repeal of section 383 of that Act;
  - (c) the repeal of subsections (5) to (7) of section 389 of that Act;
  - (d) the repeals in the Capital Allowances Act 1990;
  - (e) the repeal in section 72 of the Finance Act 1991; and
  - (f) the repeal in section 118 of the Finance Act 1994,
- have effect in accordance with sections 211(2) and 218(1)(b) of this Act.
- (6) The repeals of subsections (3) and (8) of section 385 of the Income and Corporation Taxes Act 1988 have effect in accordance with section 209(7) of this Act.
- (7) The other repeals have effect in accordance with section 218(1) of this Act.

- 4 The following repeals, namely—
- (a) the repeals in sections 113, 114, 115, 277, 380, 381 and 386 of the Income and Corporation Taxes Act 1988;
  - (b) the repeal of subsection (5) of section 384 of that Act;
  - (c) the repeal of subsections (2) and (5) of section 385 of that Act; and
  - (d) the repeal of subsection (3) of section 389 of that Act,
- have effect in accordance with section 215(4) of this Act.

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**(25) Lloyd’s underwriters**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 627.
1993 c. 34.	The Finance Act 1993.	Section 641(2). Section 171(3). In section 179, in subsection (2), the words “to subsection (3) below and”, and subsection (3). In section 182, subsections (2) to (4).

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Section 183(3).

In section 184(1), the words “or the managing agent of a syndicate of which he is a member”.

In Schedule 19, Part II.

In Schedule 20, in paragraph 13(1), the words from “and a transfer” to the end.

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- 1 The repeals in the Income and Corporation Taxes Act 1988 and in section 183 of the Finance Act 1993 have effect in accordance with section 228(4) of this Act.
- 2 The repeal in section 171 of the Finance Act 1993 has effect in accordance with paragraph 1(3)(b) of Schedule 21 to this Act.
- 3 The repeals in section 179 of the Finance Act 1993 have effect in accordance with paragraph 6(3) of that Schedule.
- 4 The repeals in section 182 of the Finance Act 1993 have effect in accordance with paragraph 7(2) of that Schedule.
- 5 The repeal in paragraph 13(1) of Schedule 20 to the Finance Act 1993 has effect in accordance with paragraph 16(3) of that Schedule.
- 6 The other repeals have effect in accordance with section 228(3) of this Act.

## PART VI

### OIL TAXATION

Chapter	Short title	Extent of repeal
1975 c. 22.	The Oil Taxation Act 1975.	In section 2(9)(a)(i), the words “or, as the case may be”.  In Schedule 3, in paragraph 2A, sub-paragraph (4).
1993 c. 34.	The Finance Act 1993.	Section 190(5)(b).

- 1 The repeals in the Oil Taxation Act 1975 have effect in accordance with section 236 of this Act.
- 2 The repeal in the Finance Act 1993 has effect in accordance with section 238 of this Act.

*Status: Point in time view as at 01/04/1996.*

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## PART VII

### STAMP DUTY

#### Commencement Information

**I6** [Sch. 26 Pt VII\(2\)](#) not in force at Royal Assent, see [s. 245\(8\)](#).

#### (1) Exchange, partition, etc.

Chapter	Short title	Extent of repeal
1891 c. 39.	The Stamp Act 1891.	In section 73, the words from first “upon” to “heritable property, or” and the words “exchange or”.  In Schedule 1, the heading “Exchange or Excambion”.
1991 c. 31.	The Finance Act 1991.	In section 110, subsection (3) (e) and, in subsection (4), the words following “exempt property”.

These repeals have effect in accordance with section 241(6) of this Act.

#### (2) Production of instruments in Northern Ireland

Chapter	Short title	Extent of repeal
1936 c. 33 (N. I.).	The Finance Act (Northern Ireland) 1936.	Section 9.

This repeal has effect in accordance with section 245(8) of this Act.

## PART VIII

### MISCELLANEOUS

#### Commencement Information

**I7** [Sch. 26 Pt VIII\(1\)](#) has effect in accordance with s. 251 which is partly retrospective to 30.11.1993; [Sch. 26 Pt. VIII\(2\)](#) deemed to have come into force on 11.1.1994.

#### (1) Companies treated as non-resident

Chapter	Short title	Extent of repeal
1988 c.1.	The Income and Corporation Taxes Act 1988.	In section 468F, in subsection (1)(c) the words “and not a dual resident”

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		and in subsection (8) the definition of “dual resident”.
		In section 742(8) the words “, or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom,”.
		In section 745(4) the words “, or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom,”.
		Section 749(4A).
		Section 751(2)(bb).
1990 c.29.	The Finance Act 1990.	Section 66.
		In section 67, subsections (1) and (2).
1992 c.12.	The Taxation of Chargeable Gains Act 1992.	Section 139(3).
		Section 160.
		In section 166(2) the words “or a company” and the words “or company”.
		In section 171(2), paragraph (e) and the word “or” immediately preceding it.
		Section 172(3)(a).
		In section 175(2) the words from “or a company which” to the end of paragraph (b).
		Section 186.
		In section 187, in subsection (1)(a) the words “or 186” and in subsection (6) the words “or, as the case may be, section 186(2),” and the words “or, as the case may be, section 186(1)”.
		Section 188.

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		In section 211(3) the words “(and would not be a gain on which, under any double taxation relief arrangements, it would not be liable to tax)”.
1993 c. 34.	The Finance Act 1993.	Section 61(3).

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These repeals have effect in accordance with section 251 of this Act.

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**(2) Railway taxation provisions**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 35(3)(d), the word “and” immediately preceding sub-paragraph (viii).

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This repeal shall be deemed to have come into force on 11th January 1994.

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**(3) Assigned matters: minor corrections**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1979 c. 2.	The Customs and Excise Management Act 1979.	In section 118A, subsection (7).
1983 c. 55.	The Value Added Tax Act 1983.	In Schedule 7, in paragraph 7, sub-paragraph (6).

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**Status:**

Point in time view as at 01/04/1996.

**Changes to legislation:**

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