

Status: Point in time view as at 01/05/1995.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1995, SCHEDULE 26. (See end of Document for details)

SCHEDULES

SCHEDULE 26

Section 135.

CHANGE IN OWNERSHIP OF INVESTMENT COMPANY: DEDUCTIONS

Introductory

- 1 The Taxes Act 1988 shall have effect subject to the amendments in paragraphs 2 to 4 below.

Main provisions

- 2 After section 768A there shall be inserted the following sections—

“768B Change in ownership of investment company: deductions generally.

- (1) This section applies where there is a change in the ownership of an investment company and—
- (a) after the change there is a significant increase in the amount of the company’s capital; or
 - (b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or
 - (c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.
- (2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company’s capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.
- (3) In paragraph (b) of subsection (1) above “major change in the nature or conduct of a business” includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.
- (4) For the purposes of this section—
- (a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
 - (b) those parts shall be treated as two separate accounting periods; and
 - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.

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- (5) In Schedule 28A—
- (a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and
 - (b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (6) Any sums which—
- (a) are disbursed or treated as disbursed as expenses of management in the accounting period being divided, and
 - (b) under Part III of Schedule 28A are apportioned to either part of that period,
- shall be treated for the purposes of section 75 as disbursed in that part.
- (7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.
- (8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of section 28 of the 1990 Act and section 75(4) as falling to be made in that part.
- (9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—
- (a) sums disbursed or allowances falling to be made for an accounting period beginning before the change; or
 - (b) charges paid in such an accounting period.
- (10) To the extent that a payment of interest made by the company represents excess overdue interest, the payment shall not be deductible under section 338(1) from the total profits for the accounting period in which it is made.
- (11) Whether a payment of interest made by the company represents excess overdue interest, and if so to what extent, shall be determined in accordance with the provisions of Part IV of Schedule 28A.
- (12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (13) The modification is that in subsection (6) of section 768 for the words “relief in respect of a company’s losses has been restricted” there shall be substituted “deductions from a company’s total profits have been restricted”.
- (14) In this section “investment company” has the same meaning as in Part IV.

768C Deductions: asset transferred within group.

- (1) This section applies where—
- (a) there is a change in the ownership of an investment company (“the relevant company”);
 - (b) none of paragraphs (a) to (c) of section 768B(1) applies;

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- (c) after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and
 - (d) a chargeable gain (“a relevant gain”) accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.
- (2) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold and the first asset was a leasehold and the lessee has acquired the reversion.
- (3) For the purposes of this section—
 - (a) the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
 - (b) those parts shall be treated as two separate accounting periods; and
 - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (4) In Schedule 28A—
 - (a) Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and
 - (b) Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.
- (6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.
- (7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—
 - (a) sums disbursed or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or
 - (b) charges paid in such an accounting period,from an amount of the total profits equal to the amount which represents the relevant gain.
- (8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—

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- (a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;
 - (b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.
- (9) To the extent that a payment of interest made by the relevant company in the accounting period in which the relevant gain accrues represents excess overdue interest, the payment shall not be deductible under section 338(1) from such part of the total profits for that accounting period as represents the relevant gain.
- (10) Whether a payment of interest made by the relevant company represents excess overdue interest, and if so to what extent, shall be determined in accordance with the provisions of Part IV of Schedule 28A.
- (11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (12) In this section—
“the relevant provisions of the 1992 Act” means section 8(1) of and Schedule 7A to that Act; and
“investment company” has the same meaning as in Part IV.”

Supplementary provisions

3 After Schedule 28 there shall be inserted—

“SCHEDULE 28A

CHANGE IN OWNERSHIP OF INVESTMENT COMPANY: DEDUCTIONS

PART I

SIGNIFICANT INCREASE IN COMPANY CAPITAL

General

- 1 The provisions referred to in section 768B(2) for determining whether there is a significant increase in the amount of a company’s capital after a change in the ownership of the company are as follows.

The basic rule

- 2 There is a significant increase in the amount of a company’s capital if amount B—
- (a) exceeds amount A by at least £1 million; or
 - (b) is at least twice amount A.

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Amount A

- 3 (1) Amount A is the lower of—
- (a) the amount of the company’s capital immediately before the change in the ownership; and
 - (b) the highest 60 day minimum amount for the pre-change year, found in accordance with sub-paragraphs (2) to (6) below.
- (2) Find the daily amounts of the company’s capital over the pre-change year.
- (3) Take the highest of the daily amounts.
- (4) Find out whether there was in the pre-change year a period of 60 days or more in which there was no daily amount lower than the amount taken.
- (5) If there was, the amount taken is the highest 60 day minimum amount for the pre-change year.
- (6) If there was not, take the next highest of the daily amounts and repeat the process in sub-paragraph (4) above; and so on, until the highest 60 day minimum amount for the pre-change year is found.
- (7) In this Part of this Schedule “the pre-change year” means the period of one year ending immediately before the change in the ownership of the company in question.

Amount B

- 4 (1) Amount B is the highest 60 day minimum amount for the post-change period (finding that amount for that period in the same way as the highest 60 day minimum amount for the pre-change year is found).
- (2) In this paragraph “the post-change period” means the period of three years beginning with the change in the ownership of the company in question.

Capital and amounts of capital

- 5 (1) The capital of a company consists of the aggregate of—
- (a) the amount of the paid up share capital of the company;
 - (b) the amount outstanding of any debts incurred by the company which are of a description mentioned in any of paragraphs (a) to (c) of section 417(7); and
 - (c) the amount outstanding of any redeemable loan capital issued by the company.
- (2) For the purposes of sub-paragraph (1) above—
- (a) the amount of the paid up share capital includes any amount in the share premium account of the company (construing “share premium account” in the same way as in section 130 of the ^{M1}Companies Act 1985); and
 - (b) the amount outstanding of any debts includes any interest due on the debts.

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- (3) Amounts of capital shall be expressed in sterling and rounded up to the nearest pound.

PART II

AMOUNTS IN ISSUE FOR PURPOSES OF SECTION 768B

- 6 The amounts in issue referred to in section 768B(4)(c) are—
- (a) the amount of any sums (including commissions) actually disbursed as expenses of management for the accounting period being divided, except any such expenses as would (apart from section 768B) be deductible in computing profits otherwise than under section 75;
 - (b) the amount of any charges which are paid in that accounting period wholly and exclusively for the purposes of the company's business;
 - (c) the amount of any excess carried forward under section 75(3) to the accounting period being divided;
 - (d) the amount of any allowances falling to be made for that accounting period by virtue of section 28 of the 1990 Act which would (apart from section 768B) be added to the expenses of management for that accounting period by virtue of section 75(4);
 - (e) any other amounts by reference to which the profits or losses of that accounting period would (apart from section 768B) be calculated.

PART III

APPORTIONMENT FOR PURPOSES OF SECTION 768B

- 7 (1) Subject to paragraph 8 below, the apportionment required by section 768B(4)(c) shall be made—
- (a) in the case of the sums and charges mentioned in paragraph 6(a) and (b) above, by reference to the time when the sum or charge is due to be paid;
 - (b) in the case of the excess mentioned in paragraph 6(c) above, by apportioning the whole amount of the excess to the first part of the accounting period being divided;
 - (c) in the case of the amounts mentioned in paragraph 6(d) and (e) above, by reference to the respective lengths of the parts of the accounting period being divided.
- (2) For the purposes of sub-paragraph (1)(a) above, in the case of any charge consisting of interest, the interest shall be assumed to become due on a day to day basis as it arises.
- 8 If it appears that any method of apportionment given by paragraph 7 above would work unreasonably or unjustly for any case for which it is given, such other method shall be used for that case as appears just and reasonable.

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PART IV

EXCESS OVERDUE INTEREST

Introductory

- 9 (1) The provisions referred to in sections 768B(11) and 768C(10) for determining whether a payment of interest made by the company or, as the case may be, the relevant company represents excess overdue interest, and if so to what extent, are set out in paragraphs 10 to 12 below.
- (2) In those paragraphs—
- (a) “overdue interest” means interest due to be paid by the company or, as the case may be, the relevant company before the change in the ownership and still unpaid at the end of the actual accounting period in which the change occurs;
 - (b) “amount C” means the amount of all the overdue interest; and
 - (c) “amount P” means the amount of the profits for the accounting period ending with the change in the ownership.
- (3) For the purposes of sub-paragraph (2) above—
- (a) interest shall be assumed to become due on a day to day basis as it arises;
 - (b) the reference to the profits is a reference to the profits after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given against the profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes.

The rules

- 10 (1) A payment of interest does not represent excess overdue interest except to the extent that it discharges a liability to pay overdue interest.
- (2) For the purposes of this Part of this Schedule, a payment of interest on a debt shall be treated as discharging any liability to pay overdue interest before it is treated to any extent as discharging a liability to pay interest which is not overdue interest.
- 11 Where amount C does not exceed amount P, no payment of interest represents excess overdue interest.
- 12 (1) Where amount C exceeds amount P—
- (a) find the amount by which amount C exceeds amount P (amount X);
 - (b) take all the payments and parts of payments which discharge any liability to pay overdue interest;
 - (c) treat those payments and parts of payments as cancelling out amount X before any other part of amount C.
- (2) A payment of interest represents excess overdue interest to the extent that, in accordance with sub-paragraph (1) above, it is treated as cancelling out amount X.

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PART V

AMOUNTS IN ISSUE FOR PURPOSES OF SECTION 768C

- 13 (1) The amounts in issue referred to in section 768C(3)(c) are—
- (a) the amount which would in accordance with the relevant provisions of the 1992 Act (and apart from section 768C) be included in respect of chargeable gains in the total profits for the accounting period being divided;
 - (b) the amount of any sums (including commissions) actually disbursed as expenses of management for the accounting period being divided except any such expenses as would (apart from section 768C) be deductible in computing total profits otherwise than under section 75;
 - (c) the amount of any charges which are paid in that accounting period wholly and exclusively for the purposes of the company's business;
 - (d) the amount of any excess carried forward under section 75(3) to the accounting period being divided;
 - (e) the amount of any allowances falling to be made for that accounting period by virtue of section 28 of the 1990 Act which would (apart from section 768C) be added to the expenses of management for that accounting period by virtue of section 75(4); and
 - (f) any other amounts by reference to which the profits or losses of the accounting period being divided would (apart from section 768C) be calculated.
- (2) In sub-paragraph (1)(a) above “the relevant provisions of the 1992 Act” means section 8(1) of and Schedule 7A to that Act.

PART VI

APPORTIONMENT FOR PURPOSES OF SECTION 768C

- 14 The apportionment required by section 768C(3)(c) shall be made as follows.
- 15 In the case of the amount mentioned in paragraph 13(1)(a) above—
- (a) if it does not exceed the amount of the relevant gain, the whole of it shall be apportioned to the second part of the accounting period being divided;
 - (b) if it exceeds the amount of the relevant gain, the excess shall be apportioned to the first part of the accounting period being divided and the relevant gain shall be apportioned to the second part.
- 16 (1) Subject to paragraph 17 below, the apportionment shall be made—
- (a) in the case of the sums and charges mentioned in paragraph 13(1)(b) and (c) above, by reference to the time when the sum or charge is due to be paid;
 - (b) in the case of the excess mentioned in paragraph 13(1)(d) above, by apportioning the whole amount of the excess to the first part of the accounting period being divided;

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- (c) in the case of the amounts mentioned in paragraph 13(1)(e) and (f) above, by reference to the respective lengths of the parts of the accounting period being divided.
- (2) For the purposes of sub-paragraph (1)(a) above, in the case of any charge consisting of interest, the interest shall be assumed to become due on a day to day basis as it arises.
- 17 If it appears that any method of apportionment given by paragraph 16 above would work unreasonably or unjustly for any case for which it is given, such other method shall be used for that case as appears just and reasonable.”

Marginal Citations

M1 1985 c. 6.

Consequential amendments

- 4 (1) Section 769 (rules for ascertaining change in ownership of company) shall be amended in accordance with sub-paragraphs (2) to (4) below.
- (2) In subsections (1), (2)(d) and (5) for “sections 767A, 768 and 768A” there shall in each case be substituted “ sections 767A, 768, 768A, 768B and 768C ”.
- (3) After subsection (3) there shall be inserted—
- “(3A) Subsection (3) above shall apply for the purposes of sections 768B and 768C as if the reference to the benefit of losses were a reference to the benefit of deductions.”
- (4) In subsection (4) for “section 768 or 768A” there shall be substituted “ section 768, 768A, 768B or 768C ”.

Application of Schedule

- 5 This Schedule shall apply in relation to a change in ownership occurring on or after 29th November 1994 other than a change occurring in pursuance of a contract entered into before that date.

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