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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 25 **U.K.**

#### LOAN RELATIONSHIPS

#### **PART 1** **U.K.**

#### AMENDMENTS OF THE FINANCE ACT 1996

##### *Introductory*

- 1 Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) is amended in accordance with the following provisions of this Part of this Schedule.

##### *Meaning of “loan relationship” etc: method of settlement*

- 2 (1) Section 81 is amended as follows.
- (2) In subsection (2) (which defines a money debt as a debt which falls to be settled by the payment of money etc)—
- (a) for “which falls” substitute “ which is, or has at any time been, one that falls, or that may at the option of the debtor or of the creditor fall, ”; and
- (b) after paragraph (b) insert—
- “disregarding any other option exercisable by either party.”.

##### *Non-trading deficit on loan relationships*

- 3 (1) Section 83 is amended as follows.
- (2) In subsection (2) (ways in which relief may be given on a claim in respect of the whole or any part of the deficit) after “the deficit”, where first occurring, insert “ (to the extent that it is not surrendered as group relief by virtue of section 403 of the Taxes Act 1988) ”.
- (3) At the end of paragraph (a) of that subsection (claim to set off against other profits of the period) insert “ or ”.
- (4) Paragraph (b) of that subsection (claim to treat as eligible for group relief) shall cease to have effect.
- (5) Paragraph (d) of that subsection (claim to carry forward and set against non-trading profits of next accounting period) shall cease to have effect.
- (6) For subsection (3) (any balance to be carried forward and treated as a deficit of the next accounting period) substitute—
- “(3A) So much of the deficit for the deficit period as is not—

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- (a) surrendered as group relief by virtue of section 403 of the Taxes Act 1988, or
  - (b) treated in any of the ways specified in subsection (2) above,
- shall be carried forward and set against non-trading profits of the company for succeeding accounting periods.”.
- (7) Subsection (4) (provisions relating to amount carried forward and treated as deficit for next accounting period, which becomes of no further utility) shall cease to have effect.
- (8) In subsection (9) (which introduces Schedule 8) for “subsection (2) above” substitute “ subsection (2)(a) or (c) above or where subsection (3A) above has effect ”.

#### *Debits and credits brought into account*

- 4 (1) Section 84 is amended as follows.
- (2) In subsection (2)(b) (which provides that the reference in subsection (1) to profits, gains and losses includes any which, in accordance with normal accountancy practice, are carried to or sustained by certain reserves) for “normal accountancy practice” substitute “ generally accepted accounting practice ”.
- (3) After subsection (4) insert—
- “(4A) Where—
- (a) different authorised accounting methods are used for the purposes of this Chapter as respects the same loan relationship for different parts of the same accounting period or for successive accounting periods, and
  - (b) no debit or credit falls to be brought into account under subsection (2)(c) or (3)(b) of section 90 below in consequence of the change of method, but
  - (c) an amount is brought into account for the purposes of the company’s statutory accounts in respect of the change of method,
- that amount shall be taken for the purposes of this Chapter to be included among the sums in respect of which debits and credits fall to be brought into account for the purposes of this Chapter in accordance with subsection (1) (a) above.”.

#### *Authorised accounting methods*

- 5 (1) Section 85 is amended as follows.
- (2) In subsection (2) (accounting methods authorised only if the conditions in the paragraphs of the subsection are satisfied) for paragraph (a) (conformity to normal accountancy practice) substitute—
- “(a) subject to paragraphs (b) to (c) below, it is in conformity with generally accepted accounting practice to use that method in that case;”.
- (3) In paragraph (b) of that subsection (provision for allocating payments under a loan relationship to accounting periods) after “payments under a loan relationship” insert “ , or arising as a result of a related transaction, ”.

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### *Application of accounting methods*

- 6 (1) Section 86 is amended as follows.
- (2) In subsection (3) (method to be used where basis used in statutory accounts is, or equates to, an authorised accounting method) after paragraph (b) insert—
- “but this subsection is subject to subsections (3A) and (3D) below.”
- (3) After subsection (3) insert—
- “(3A) If, in the case of a company falling within subsection (8)(c) or (d) below, an authorised mark to market basis of accounting—
- (a) would be used as respects some or all of the company’s loan relationships, were the company a UK company following generally accepted accounting practice, but
  - (b) is not the basis of accounting used as respects those loan relationships in the company’s statutory accounts,
- the company may elect to use an authorised mark to market basis of accounting as its authorised accounting method for the purposes of this Chapter in relation to every loan relationship as respects which that basis would be used if the company were a UK company following generally accepted accounting practice.
- (3B) Any election under subsection (3A) above—
- (a) must be made before the expiration of the period of two years following the end of the company’s first accounting period beginning on or after 1st October 2002 in which it is party to a loan relationship in relation to which such an election may be made;
  - (b) has effect for that accounting period and all subsequent accounting periods of the company; and
  - (c) is irrevocable.
- (3C) A company which makes an election under sub-paragraph (3A) above as respects its loan relationships shall be taken for the purposes of Schedule 26 to the Finance Act 2002 (derivative contracts) to have at the same time made an election under sub-paragraph (2) of paragraph 19 of that Schedule having effect—
- (a) for the accounting periods mentioned in subsection (3B)(b) above, and
  - (b) as respects any derivative contracts to which the company is or may become party in any of those accounting periods,
- and that election shall so have effect notwithstanding anything in paragraph (a) or (b) of sub-paragraph (3) of that paragraph.
- (3D) If, in the case of a company falling within subsection (8)(c) or (d) below which has not made an election under subsection (3A) above,—
- (a) an authorised mark to market basis of accounting would be used for an accounting period—
    - (i) as respects some or all of the company’s loan relationships, and
    - (ii) as respects some or all of the company’s derivative contracts,

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were the company a UK company following generally accepted accounting practice, and

- (b) that basis of accounting—
- (i) is used in the company’s statutory accounts as respects those derivative contracts for that accounting period, but
  - (ii) is not the basis of accounting used in those accounts as respects those loan relationships for that accounting period,
- the company must for that accounting period use an authorised mark to market basis of accounting as its authorised accounting method for the purposes of this Chapter in relation to every loan relationship as respects which that basis would be used if the company were a UK company following generally accepted accounting practice.”.

- (4) In subsection (4) (authorised accruals basis to be used where authorised accounting method not determined under subsection (3)) for “determined under subsection (3) above,” substitute the following paragraphs—

- “(a) a method determined under subsection (3) above,
- (b) an authorised mark to market method in accordance with an election under subsection (3A) above, or
- (c) an authorised mark to market method in accordance with subsection (3D) above.”.

- (5) In subsection (7) (meaning of “fair value”) the words from “ “fair value”” onwards become a separate definition and after that definition insert the following definition—

““UK company” means a company incorporated or formed under the law of a part of the United Kingdom.”.

- (6) In subsection (8) (meaning of “statutory accounts” in the section) for “In this section” substitute “ In this Chapter ”.

#### *Accounting method where parties have a connection*

- 7 (1) Section 87 is amended as follows.
- (2) In subsection (3) (meaning of connection between company and another person) in paragraph (a)(case where one company has had control of the other in an accounting period or in the two years preceding it)—
- (a) omit “, or in the two years before the beginning of that period,”; and
  - (b) at the end of the paragraph, insert “ or ”.
- (3) In paragraph (b) of that subsection (case where both companies under control of same person in that period or those two years) omit “, or in those two years,”.
- (4) Omit paragraph (c) of that subsection (company was close company and other person was participator or associate of participator in that period or those two years).
- (5) In subsection (5) (persons indirectly standing in position of creditor or debtor by reference to a series of loan relationships) after “series of loan relationships” insert “ or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor ”.
- (6) After subsection (5) insert—

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“(5A) Where a trade, profession or business is carried on by two or more persons in partnership (“the firm”) and the firm stands in the position of a creditor or debtor as respects a money debt, any question—

- (a) whether there is for the purposes of this Chapter a connection, within the meaning of this section, between any two companies for an accounting period in the case of a loan relationship, or
- (b) to what extent any amount is to be treated under this Chapter in any particular way as a result of there being, or not being, such a connection,

shall be determined as if to the extent of his appropriate share each of the partners separately, instead of the firm, stood in the position of a creditor or, as the case may be, debtor as respects the money debt.

The reference in the words following paragraph (b) above to partners does not include a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.

(5B) For the purposes of subsection (5A) above, a partner’s “appropriate share” is the share that would be apportioned to him if an apportionment were made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 for the accounting period in question would be apportioned between the partners under subsection (2) of that section.”.

(7) Omit subsections (6) to (8)(meaning of “control”, “participator” and “associate”).

#### *Meaning of “control” in section 87*

8 After section 87 insert—

#### **“87A Meaning of “control” in section 87**

(1) For the purposes of section 87 above, “control”, in relation to a company, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) There shall be left out of account for the purposes of this section—

- (a) any shares held by a company, and
- (b) any voting power or other powers arising from shares held by a company,

if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988, assets of an insurance company’s long-term insurance fund (see section 431(2) of that Act).

(3) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a

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partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this section, as respects any time in an accounting period of the partnership, as if—

- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
- (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section,

but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.”.

#### *Inconsistent application of accounting methods*

- 9 Section 89(which has become unnecessary because, in accordance with generally accepted accounting practice, a similar adjustment falls to be recognised in the profit and loss account of the company and debits or credits accordingly fall to be brought into account pursuant to section 84(1) of the Finance Act 1996 (c. 8)) shall cease to have effect.

#### *Changes of accounting method*

- 10 (1) Section 90 is amended as follows.
- (2) In subsection (1) (application of section) after “where” insert “ (a) ” and at the end of the subsection add—
- “(b) the change of method is in pursuance of a requirement of this Chapter as to the basis of accounting to be used for the purposes of this Chapter in the case of the loan relationship; and
  - (c) the case does not fall within subsection (1A) below”.
- (3) After subsection (1) insert—
- “(1A) The case falls within this subsection if, for the purposes of the company’s statutory accounts, the different authorised accounting methods mentioned in subsection (1) above are also used as respects the loan relationship for the same parts of the same accounting period or, as the case may be, for the same successive accounting periods as are mentioned in subsection (1) above.”.

#### *Payments subject to deduction of tax*

- 11 Section 91 shall cease to have effect.

#### *Indexed gilt-edged securities*

- 12 (1) Section 94 is amended as follows.
- (2) After subsection (3) (adjustment of opening value by reference to movement in retail prices index between earlier time and later time) insert—
- “(3A) Where the authorised accounting method applied is an accruals basis of accounting, the amount which is the opening value shall be taken to be the

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amount of the value which (disregarding interest) accrued to the company under the loan relationship before the earlier time.”.

- (3) In subsection (6) (the percentage increase or decrease in retail prices index) after paragraph (b) insert—

“except that where the earlier time falls at the beginning of an accounting period which begins with the first day of a month, the index for the previous month shall be used for the purposes of paragraph (a) above.”.

### *Manufactured interest*

- 13 (1) Section 97 is amended as follows.

- (2) In subsection (1) (application of section)—

- (a) for “This section applies where—” substitute “ For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where— ”;
- (b) in paragraph (a), for “any company” substitute “ the company ”;
- (c) in paragraph (b), for “that relationship” substitute “ that loan relationship ”; and
- (d) after paragraph (b), add—

“and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly”.

- (3) For subsection (2) (treatment of the manufactured interest) substitute—

“(2) Where a company has a relationship to which this section applies—

- (a) this Chapter shall have effect in relation to the company and the manufactured interest under the relationship—
  - (i) as it would have effect if the manufactured interest were interest payable on a loan by, or (as the case may be) to, the company and were accordingly interest under a loan relationship to which the company is a party, and
  - (ii) where that company is the company to which the manufactured interest is payable, as if that relationship were the one under which the real interest is payable, but
- (b) the only credits or (subject to subsection (4A) below) debits to be brought into account for the purposes of this Chapter by virtue of this section in respect of a relationship are those relating to that interest, and, subject to paragraphs (a)(ii) and (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.”.

- (4) After subsection (3) (trading and non-trading debits and credits) insert—

“(3A) To the extent that debits or credits fall to be brought into account by a company under section 82(2) above in the case of a relationship to which this section applies, the company shall be regarded for the purposes of this Chapter as being party to the relationship for the purposes of a trade carried on by the company.”.

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- (5) In subsection (4) (which applies the section to a deemed manufactured payment under section 737A(5) of the Taxes Act 1988 as if such a representative payment had in fact been made) before “737A(5)” insert “ 736B(2) or ”.
- (6) After subsection (4) insert—

“(4A) Where, for the purposes of section 736B of the Taxes Act 1988, a company is the borrower under a stock lending arrangement, then (pursuant to subsection (2A) of that section (which precludes deductions or group relief for the borrower)) no debits are to be brought into account for the purposes of this Chapter by that company in respect of the deemed representative payment under that section which is treated under subsection (4) above as if it had in fact been made.”.

*Interpretation: “shares” not to include building society shares*

- 14 In section 103(1) (definitions) in the definition of “share”, at the end insert “ but does not include a share in a building society ”.

*Interpretation: miscellaneous*

- 15 In section 103(1) (definitions) insert the following definitions at the appropriate place—
- ““derivative contract” has the same meaning as in Schedule 26 to the Finance Act 2002;”;
- ““statutory accounts” has the meaning given by section 86(8) above”.

*Provision continuing to be made on accruals basis after company ceases to be party*

- 16 At the end of section 103 (interpretation) insert—
- “(6) Where—
- (a) a company ceases to be a party to a loan relationship in an accounting period (the “cessation period”),
  - (b) profits, gains or losses arise to the company from the loan relationship or a related transaction in that accounting period, and
  - (c) the credits or debits brought into account for the purposes of this Chapter for that accounting period do not include credits or debits which represent the whole of those profits, gains or losses,
- credits or debits in respect of so much of those profits, gains or losses as are not represented by credits or debits brought into account for the cessation period shall continue to be brought into account under this Chapter over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a loan relationship to which the company is a party in those periods, and subsections (7) and (8) below shall apply.
- (7) In any case falling within subsection (6) above, any question—
- (a) whether, in a post-cessation period, the company is to any extent a party to the loan relationship—
    - (i) for the purposes of a trade carried on by it, or
    - (ii) for any other particular purpose or purposes, or



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(b) whether, in a post-cessation period, the loan relationship is to any extent referable to a particular business, or a particular class, category or description of business, carried on by the company, shall be determined by reference to the circumstances immediately before the company ceased to be a party to the loan relationship instead of the circumstances in the post-cessation period.

(8) In any case falling within subsection (6) above, any question—

(a) whether the loan relationship has to any extent a particular purpose in a post-cessation period, or

(b) whether there is a connection between the company and any other person for a post-cessation period,

shall be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.”.

#### *Claims to treat deficit as eligible for group relief*

17 In Schedule 8 (loan relationships: claims relating to deficits) paragraph 2(claims under section 83(2)(b)) shall cease to have effect.

#### *Claim to carry back deficit to previous accounting periods*

18 (1) Paragraph 3 of Schedule 8 is amended as follows.

(2) In sub-paragraph (2)(a)(i) (which refers to a claim under section 83(2)(a) or (b)) for “under subsection (2)(a) or (b)” substitute “ under subsection (2)(a) ”.

(3) In sub-paragraph (6)(e) (which refers to a claim under section 83(2)(a) or (b)) for “under section 83(2)(a) or (b)” substitute “ under section 83(2)(a) ”.

#### *Deficit carried forward and set against non-trading profits of succeeding accounting periods*

19 (1) Paragraph 4 of Schedule 8 (claim to carry forward deficit to next accounting period) is amended as follows.

(2) For sub-paragraph (1) (application of paragraph) substitute—

“(1) This paragraph applies where, pursuant to section 83(3A) of this Act, any of the deficit for a deficit period is to be carried forward and set against non-trading profits for succeeding accounting periods.”.

(3) In sub-paragraph (2) (treatment of amount to which the claim relates) for “The amount to which the claim relates” substitute “ The amount carried forward from the deficit period, reduced by any amount claimed under sub-paragraph (3) below, ”.

(4) Re-number sub-paragraph (3) (definition of “non-trading profits”) as sub-paragraph (6) and before that sub-paragraph insert—

“(3) The company may make a claim for so much of the amount carried forward from the deficit period as may be specified in the claim to be excepted from being set against non-trading profits of the accounting period immediately following the deficit period.

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(4) Any claim under sub-paragraph (3) above must be made before the expiration of the period of 2 years following the end of that accounting period.

(5) So much of the amount carried forward from the deficit period as—  
 (a) cannot be relieved under sub-paragraph (2) above against non-trading profits of the accounting period immediately following the deficit period, or  
 (b) is the subject of a claim under sub-paragraph (3) above in respect of that accounting period,

shall be treated for the purposes of this Chapter as if it were an amount of non-trading deficit on the company's loan relationships for that accounting period which, pursuant to section 83(3A) of this Act, falls to be carried forward and set against non-trading profits of succeeding accounting periods (and this paragraph shall apply accordingly)."

(5) In consequence of the amendments made by this paragraph—  
 (a) the heading to that paragraph becomes "*Carry forward of deficit to succeeding accounting periods*"; and  
 (b) in the title of the Schedule, "claims" becomes "claims etc".

#### *Distributions*

20 In Schedule 9 (loan relationships: special computational provisions) in paragraph 1, at the beginning insert "(1)" and at the end insert—

"(2) Nothing in section 80(5) of this Act prevents an amount which, by virtue of sub-paragraph (1) above, is not brought into account for the purposes of this Chapter from being brought into account for the purposes of corporation tax apart from this Chapter."

#### *Life assurance policies and capital redemption policies*

21 After paragraph 1 of Schedule 9 insert—

##### **"Life assurance policies and capital redemption policies**

1A (1) The credits and debits to be brought into account for the purposes of this Chapter shall not include any credits or debits relating to—  
 (a) a policy of life assurance; or  
 (b) a capital redemption policy, within the meaning of Chapter 2 of Part 13 of the Taxes Act 1988.

(2) Nothing in section 80(5) of this Act prevents an amount which, by virtue of sub-paragraph (1) above, is not brought into account for the purposes of this Chapter from being brought into account for the purposes of corporation tax apart from this Chapter."

#### *Late interest: further cases where paragraph 2 of Schedule 9 applies*

22 (1) Paragraph 2 of Schedule 9 is amended as follows.

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- (2) In sub-paragraph (1) (application of paragraph) for the words following “company” substitute “ (“the debtor company”) in a case falling within any of sub-paragraphs (1A) to (1D) below. ”.
- (3) After sub-paragraph (1) insert—
- “(1A) The first case is where there is, for the relevant accounting period, a connection (within the meaning of section 87 of this Act) between the debtor company and a person standing in the position of creditor as respects the loan relationship.
- (1B) The second case is where there is a time in the relevant accounting period when the debtor company is a close company and a person standing in the position of a creditor as respects the loan relationship is—
- (a) a participator in the debtor company,
  - (b) the associate of a person who is such a participator at that time, or
  - (c) a company of which such a participator has control or in which such a participator has a major interest,
- and the debt is not one that is owed to, or to persons acting for, a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.
- (1C) The third case is where—
- (a) a person standing in the position of a creditor as respects the loan relationship is a company (“the creditor company”); and
  - (b) there is a time in the relevant accounting period when the debtor company has a major interest in the creditor company or the creditor company has a major interest in the debtor company.
- (1D) The fourth case is where the loan is one made by trustees of a retirement benefits scheme (as defined in section 611 of the Taxes Act 1988) and—
- (a) there is a time in the relevant accounting period when the debtor company is the employer of employees to whom the scheme relates; or
  - (b) there is for the relevant accounting period a connection, within the meaning of section 87 of this Act, between the debtor company and such an employer; or
  - (c) a company is such an employer and there is a time in the relevant accounting period when the debtor company has a major interest in that company or that company has a major interest in the debtor company.”.

(4) After sub-paragraph (2) insert—

“(3) References in this paragraph to a person who stands in the position of a creditor as respects a loan relationship include references to a person who indirectly stands in that position by reference to a series of loan relationships or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor.

(4) Where this paragraph applies in relation to a debtor relationship by virtue of sub-paragraph (3) above, the reference to the corresponding creditor relationship in sub-paragraph (2)(b) above is a reference to the creditor

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relationship of the person who indirectly stands in the position of a creditor as respects the debtor relationship.

- (5) For the purposes of this section, section 414 of the Taxes Act 1988 (meaning of “close company” in the Tax Acts) shall have effect with the omission of subsection (1)(a) (exclusion of companies not resident in the United Kingdom).
- (6) In this paragraph—
- “associate” has the meaning given by section 417(3) and (4) of the Taxes Act 1988;
- “control” has the same meaning as in section 87 of this Act (see section 87A);
- “participator”, in relation to a close company, means a person who, by virtue of section 417 of the Taxes Act 1988, is a participator in the company for the purposes of Part 11 of that Act, other than a person who is a participator for those purposes by virtue only of being a loan creditor of the company;
- “the relevant accounting period” means the accounting period mentioned in sub-paragraph (2)(a) above.
- (7) Paragraph 20 below (major interests) applies for the purposes of this paragraph.”.

#### *Bad debts and consortium relief*

23 In Schedule 9, after paragraph 5 (bad debt etc) insert—

#### **“Bad debts and consortium relief**

- 5A (1) This paragraph applies where the conditions in sub-paragraphs (2) and (3) below are satisfied.
- (2) The first condition is that by virtue of paragraph 5 above a debit is or has been brought into account for the purposes of this Chapter for any group accounting period by—
- (a) a company (“the member company”) which is a member of a consortium by which a consortium company is owned; or
  - (b) a company (a “group member”) which is a member of the same group of companies as the member company but is not itself a member of the consortium.
- (3) The second condition is that the debit is or was in respect of a creditor relationship of the member company or group member and—
- (a) the consortium company, or
  - (b) if that company is a holding company, a consortium company which is a subsidiary of that company,
- is or, as the case may be, was the debtor (“the debtor consortium company”).
- (4) Any reference in this paragraph to a “relevant creditor relationship” is a reference to a creditor relationship (whether of the member company or a group member) which falls within sub-paragraph (3) above.

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- (5) For the purposes of this paragraph there is for any group accounting period a “relevant net debit” in relation to the relevant creditor relationships if—
- (a) the total of the debits brought into account for that period by virtue of paragraph 5 above in respect of those relationships by—
    - (i) the member company, and
    - (ii) every group member,exceeds
  - (b) the total of any related debt recovery credits so brought into account by those companies for that period in respect of those relationships,
- and the amount of the relevant net debit is the amount of that excess.
- (6) Where there is for any group accounting period a relevant net debit in relation to the relevant creditor relationships, the amount of the relevant net debit shall be reduced by so much of any amount which—
- (a) may be surrendered as group relief by the debtor consortium company, and
  - (b) is claimed as group relief for that accounting period by the member company or any group member,
- as does not exceed the amount of the relevant net debit.
- (7) Where a relevant net debit falls to be reduced under sub-paragraph (6) above by any amount (“the relevant reduction”), each of the debits brought into account in determining the relevant net debit shall be reduced by an amount found by apportioning between those debits, in proportion to their respective amounts, the amount of the relevant reduction.
- (8) For the purposes of this paragraph there is for any group accounting period a “surplus of related debt recovery credits” in relation to the relevant creditor relationships if—
- (a) the total amount of any related debt recovery credits brought into account under paragraph 5 above for the period in respect of those relationships by—
    - (i) the member company, and
    - (ii) every group member,exceeds
  - (b) the total of the debits brought into account for that period by virtue of paragraph 5 above in respect of those relationships by those companies.
- (9) Where there is for any group accounting period a surplus of related debt recovery credits in relation to the relevant creditor relationships, each of the related debt recovery credits falling to be brought into account by virtue of paragraph 5(2) above in respect of those relationships shall be reduced (but not below nil) by the appropriate amount.

For the purposes of this sub-paragraph “the appropriate amount” is the amount found by apportioning between those related debt recovery

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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credits, in proportion to their respective amounts, the cumulative net sub-paragraph (6) reduction for earlier group accounting periods in respect of the relevant creditor relationships.

- (10) In this paragraph, for any group accounting period the cumulative net sub-paragraph (6) reduction for earlier group accounting periods in respect of the relevant creditor relationships is—
- (a) the total amount by which the relevant net debits in respect of those relationships for any previous group accounting periods have been reduced by virtue of sub-paragraph (6) above; less
  - (b) so much of that total amount as has been previously apportioned under sub-paragraph (9) above.
- (11) Any reference in this paragraph to a “relevant claim for group relief” is a reference to a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by the debtor consortium company.
- (12) Any relevant claim for group relief for a group accounting period shall be reduced by so much of the cumulative net amount of relevant net debits for earlier group accounting periods in respect of the relevant creditor relationships as does not exceed the total amount of the claim.

Where there are two or more such claims for the same group accounting period which in total exceed that cumulative net amount, each of them shall be reduced by an amount found by apportioning that cumulative net amount between them in proportion to their respective amounts.

- (13) In this paragraph, for any group accounting period the cumulative net amount of relevant net debits for earlier group accounting periods in respect of the relevant creditor relationships is the total amount of the relevant net debits for those earlier periods in respect of those relationships, after any reductions falling to be made under this paragraph in the amounts of those relevant net debits.
- (14) If there is for any group accounting period—
- (a) a relevant claim for group relief (as reduced by virtue of sub-paragraph (12) above, where applicable), and
  - (b) no relevant net debit in respect of the relevant creditor relationships,

the claim (as so reduced) shall be carried forward and treated for the purposes of sub-paragraph (12) above as increasing any relevant claim for group relief made by the claimant company for its next accounting period (or, if there is no other relevant claim for group relief made by that company for that period, as the relevant claim for group relief by that company for that period).

- (15) Where—
- (a) the debtor consortium company has brought an amount into account by virtue of paragraph 5(3) above for an accounting period in relation to a debtor relationship, and
  - (b) the corresponding creditor relationship is a relevant creditor relationship,

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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an equal amount shall be treated for the purposes of this paragraph as not being a debit brought into account for that period under paragraph 5(1) in relation to the creditor relationship.

(16) Where section 403C of the Taxes Act 1988 (amount of relief in consortium cases) applies, effect shall be given to that section before effect is given to this paragraph.

(17) In this paragraph “group accounting period” means—

- (a) any accounting period of the member company beginning on or after 1st October 2002, or
- (b) any accounting period of a group member which begins on or after that date and corresponds to such an accounting period of the member company,

and any such accounting period of the member company and any such corresponding accounting periods of one or more group members shall be regarded for the purposes of this paragraph as being the same accounting period.

(18) For the purposes of this paragraph an accounting period of a group member corresponds to an accounting period of the member company if—

- (a) the two accounting periods coincide;
- (b) the accounting period of the member company includes more than half of the accounting period of the group member; or
- (c) the accounting period of the member company includes part of the accounting period of the group member, but the remainder of that period does not fall within any accounting period of the member company.

(19) In this paragraph—

“consortium claim” means a claim for group relief made by virtue of section 402(3) of the Taxes Act 1988;

“consortium company” means a company falling within any of paragraphs (a) to (c) of section 402(3) of the Taxes Act 1988 (surrender of relief between members of consortia);

“cumulative net amount of relevant net debits” shall be construed in accordance with sub-paragraph (13) above;

“cumulative net sub-paragraph (6) reduction” shall be construed in accordance with sub-paragraph (10) above;

“debtor consortium company” shall be construed in accordance with sub-paragraph (3) above;

“group accounting period” shall be construed in accordance with sub-paragraphs (17) and (18) above;

“group member” shall be construed in accordance with sub-paragraph (2)(b) above;

“group relief” has the meaning given by section 402(1) of the Taxes Act 1988;

“holding company” means a company falling within section 402(3)(c) of the Taxes Act 1988;

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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“member”, in relation to a consortium, has the same meaning as in Chapter 4 of Part 10 of the Taxes Act 1988 (group relief);

“member company” shall be construed in accordance with sub-paragraph (2)(a) above;

“related debt recovery credit”, in relation to a group accounting period, means a credit falling to be brought into account for the purposes of this Chapter for that period by the member company or a group member by virtue of paragraph 5(2) above in connection with a bad debt owed by the debtor consortium company;

“relevant claim for group relief” shall be construed in accordance with sub-paragraph (11) above;

“relevant creditor relationship” shall be construed in accordance with sub-paragraph (4) above;

“relevant net debit” shall be construed in accordance with sub-paragraph (5) above;

“subsidiary”, in relation to a company which is a holding company, means a company falling within section 402(3)(b) of the Taxes Act 1988 by reference to that holding company;

“surplus of related debt recovery credits” shall be construed in accordance with sub-paragraph (9) above;

“surrendering company” has the meaning given by section 402(1) of the Taxes Act 1988.

- (20) Any reference in this paragraph to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).
- (21) Any reference in this paragraph to a company being owned by a consortium shall be construed in accordance with section 413(6) of the Taxes Act 1988.”.

*Bad debt etc where parties have a connection*

- 24 (1) Paragraph 6 of Schedule 9 is amended as follows.
- (2) In sub-paragraph (2) (credits and debits to be computed subject to sub-paragraphs (3) to (6)) after “sub-paragraphs (3) to (6)” insert “ and paragraphs 6A and 6B ”.
- (3) In sub-paragraph (3) (assumption that every amount will be paid in full to be applied, subject to any departure allowed by sub-paragraph (4)) after “sub-paragraph (4)” insert “ or paragraph 6A or 6B ”.

*Bad debt etc: parties having connection and creditor company in insolvent liquidation etc*

- 25 After paragraph 6 of Schedule 9 insert—

**“Bad debt etc: parties having connection and creditor in insolvent liquidation etc**

- 6A (1) This paragraph applies in any case falling within paragraph 6(1) above where—



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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (a) the company which has the creditor relationship (“the creditor company”) has gone into insolvent liquidation;
  - (b) an administration order is in force in relation to that company under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989;
  - (c) an appointment of a provisional liquidator is in force in relation to that company under section 135 of that Act or Article 115 of that Order; or
  - (d) under the law of a country or territory outside the United Kingdom, an event has occurred, or circumstances exist, corresponding to any of those described in paragraphs (a) to (c) above.
- (2) Where this paragraph applies, a departure from the assumption that every amount payable under the relationship will be paid in full shall be allowed in relation to any amount accruing to the creditor company under the relationship—
- (a) in a case falling within paragraph (a) of sub-paragraph (1) above, at a time after the commencement of the winding up;
  - (b) in a case falling within paragraph (b) of that sub-paragraph, at a time when the administration order is in force;
  - (c) in a case falling within paragraph (c) of that sub-paragraph, at a time when the appointment of the provisional liquidator is in force; or
  - (d) in a case falling within paragraph (d) of that sub-paragraph, at a time corresponding to that described in paragraph (a), (b) or (c) above (as the case may be).
- (3) For the purposes of this paragraph, a company goes into insolvent liquidation if it goes into liquidation, as defined in section 247(2) of the Insolvency Act 1986 or Article 6(2) of the Insolvency (Northern Ireland) Order 1989, at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.”.

*Bad debt etc: companies becoming connected*

26 After paragraph 6A of Schedule 9 insert—

**“Bad debt etc: companies becoming connected**

6B (1) Where—

- (a) paragraph 6 above applies in relation to a creditor relationship of a company (the “creditor company”) in the case of an accounting period, and
- (b) another company (the “debtor company”) stands in the position of a debtor as respects the money debt,

a departure from the assumption mentioned in paragraph 6(3) above shall be allowed in accordance with sub-paragraphs (2) to (4) or (5) to (7) below.

- (2) A departure from the assumption mentioned in paragraph 6(3) above shall be allowed in the case of the creditor relationship if—

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (a) a departure has been allowed under paragraph 5(1) above in respect of the creditor relationship for a previous accounting period for which there was no connection between the creditor company and the debtor company; and
  - (b) the first accounting period of the creditor company for which there is or was such a connection is an accounting period beginning on or after 1st October 2002.
- (3) A departure shall be allowed under sub-paragraph (2) above to the extent only that the debits brought into account by the creditor company for the accounting period in respect of the relationship are not more than they would have been if it were assumed that the aggregate of the amounts payable in respect of the creditor relationship were equal to the pre-connection value of the asset representing the creditor relationship.
- (4) The “pre-connection value” of the asset representing the creditor relationship is the value of that asset as shown in the accounts of the creditor company at the end of the accounting period immediately preceding the accounting period mentioned in sub-paragraph (2)(b) above.
- (5) A departure from the assumption mentioned in paragraph 6(3) above shall be allowed for the accounting period in respect of the creditor relationship, if the conditions in sub-paragraph (6) below are satisfied.
- (6) The conditions are that—
  - (a) the creditor company acquired its rights under the relationship by virtue of an arm’s length transaction;
  - (b) for the accounting period in which it acquired those rights, there was no connection between the creditor company and the person from whom it acquired the asset; and
  - (c) there had been no such connection between the creditor company and the debtor company at any time in the period which—
    - (i) begins 4 years before the date on which the company acquired those rights; and
    - (ii) ends twelve months before that date.
- (7) A departure shall be allowed under sub-paragraph (5) above to the extent only that the debits brought into account by the creditor company for the accounting period in respect of the relationship are not more than they would have been if—
  - (a) it were assumed that the aggregate of the amounts payable in respect of the relationship were equal to the price paid by the company to acquire its rights; and
  - (b) no departure were allowed from the assumption in paragraph (a) above.
- (8) For the purposes of this paragraph, there is a connection between a company and another person at any time if at that time—
  - (a) the other person is a company and one of the companies has control of the other, or

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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(b) the other person is a company and both companies are under the control of the same person,

and there is a connection between a company and another person for an accounting period if there is a connection (within paragraph (a) or (b) above) between the company and the person at any time in that accounting period.

(9) For the purposes of sub-paragraph (8) above “control” has the meaning given for the purposes of section 87 by section 87A of this Act.”

*Bad debt etc: departure not permitted by paragraph 6: subsequent cessation of connection*

27 After paragraph 6B of Schedule 9 insert—

**“Bad debt etc: departure not permitted by paragraph 6: cessation of connection**

6C (1) Where, in the case of a creditor relationship of a company,—

(a) a departure that would otherwise have been allowed under paragraph 5(1) above in respect of an amount is or was, by virtue of paragraph 6 above, not allowed in the case of an accounting period; and

(b) there is a subsequent accounting period for which there is, within the meaning of section 87 of this Act, no connection between the company and any person standing in the position of a debtor as respects the debt,

sub-paragraphs (2) and (3) below shall apply.

(2) Where this sub-paragraph applies, no credit shall be required to be brought into account by virtue of paragraph 5(2) above in respect of an amount—

(a) for the first accounting period falling within sub-paragraph (1) (b) above, or

(b) for any subsequent such accounting period,

to the extent that the amount in question corresponds to the amount mentioned in sub-paragraph (1)(a) above.

(3) Where this sub-paragraph applies, no debit shall be brought into account in respect of an amount—

(a) for the first accounting period falling within sub-paragraph (1) (b) above, or

(b) for any subsequent such accounting period,

to the extent that the amount in question represents the amount mentioned in sub-paragraph (1)(a) above.”

*Imported losses etc*

28 In paragraph 10 of Schedule 9 at the end insert—

“(5) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Chapter as respects any matter are in consequence also amounts which, in accordance with section 80(5) of this Act, are not

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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to be brought into account for the purposes of corporation tax as respects that matter apart from this Chapter.”.

*Continuity of treatment: groups etc*

- 29 (1) Paragraph 12 of Schedule 9 is amended as follows.  
(2) After sub-paragraph (2) insert—

“(2A) This paragraph does not apply where the transferor company uses an authorised mark to market basis of accounting as respects the loan relationship, but in any such case—

(a) the amount to be brought into account by the transferee company in respect of the transaction, the result of the series of transactions, or the transfer must be the fair value of the asset, or of the rights under or interest in the asset, as at the date on which the transferee company becomes party to the loan relationship; and

(b) paragraph (b) of sub-paragraph (2) above shall have effect for the purposes of section 90 of this Act (changes of accounting method).”.

*Loan relationships for unallowable purposes*

- 30 In paragraph 13 of Schedule 9, after sub-paragraph (1) insert—

“(1A) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Chapter as respects any matter are in consequence also amounts which, in accordance with section 80(5) of this Act, are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Chapter.”.

*Debits and credits treated as relating to capital expenditure*

- 31 (1) Paragraph 14 of Schedule 9 is amended as follows.  
(2) In sub-paragraphs (1) and (2), for “normal accountancy practice”, in each place where occurring, substitute “generally accepted accounting practice”.  
(3) After sub-paragraph (2) add—

“(3) No debit may be brought into account by virtue of this paragraph if it is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets).”.

*Repo transactions and stock lending*

- 32 (1) Paragraph 15 is amended as follows.  
(2) After sub-paragraph (4) (equivalent rights) insert—

“(4A) In consequence of sub-paragraph (1) above—

(a) the person transferring the rights mentioned in sub-paragraph (3) (a) above does not, as a result of the transfer, fall to be regarded for the purposes of this Chapter as ceasing to be party to the loan relationship; and

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (b) the person to whom those rights are transferred does not, as a result of the transfer, fall to be regarded for the purposes of this Chapter as being party to the loan relationship;  
but nothing in sub-paragraph (1) or paragraph (b) above shall prevent any credit in respect of interest from being brought into account for the purposes of this Chapter by the person described in that paragraph.”
- (3) After sub-paragraph (6) (which provides that the paragraph is without prejudice to section 730A(2) and (6)) insert—
  - “(6A) Nothing in this paragraph affects section 807A(2A) of the Taxes Act 1988 (double taxation relief in the case of repo or stock lending agreement).”

*Discounted securities where companies have a connection*

- 33 (1) Paragraph 17 of Schedule 9 is amended as follows.
- (2) In sub-paragraph (1) (accounting periods to which the paragraph applies) for paragraph (b) substitute—
    - “(b) at any time in that period another company stands in the position of a creditor as respects that security;”
  - (3) In sub-paragraph (5) (meaning of “connection” between companies) in paragraph (a) (one of the companies has had control of the other in the accounting period or the preceding two years)—
    - (a) omit “, or in the period of two years before the beginning of that period;” and
    - (b) after “control of” insert “, or a major interest in, ”.
  - (4) In paragraph (b) of that sub-paragraph (both companies under control of same person in that period or those two years) omit “, or in those two years.”
  - (5) For sub-paragraph (8) (which defines what it is for the benefit of a security to be available to a company) substitute—
    - “(8) Any reference in this paragraph to a person who stands in the position of a creditor as respects a relevant discounted security includes a reference to a person who indirectly stands in that position by reference to a series of relevant discounted securities.
    - (8A) Where this paragraph applies by virtue of sub-paragraph (8) above, the reference to the corresponding creditor relationship in sub-paragraph (1) (d) above is a reference to the creditor relationship of the company which indirectly stands in the position of a creditor as respects the relevant discounted security.”
  - (6) For sub-paragraph (9) (meaning of “control”) substitute—
    - “(9) For the purposes of this paragraph “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).
    - (10) Paragraph 20 below (major interests) applies for the purposes of this paragraph.”

*Discounted securities of close companies*

- 34 (1) Paragraph 18 of Schedule 9 is amended as follows.

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (2) In sub-paragraph (1)(accounting periods to which the paragraph applies)—
- (a) after “any accounting period” insert “ (“the relevant period”) ”;
  - (b) in paragraph (a), after “a close company” insert “ (“the issuing company”) ”; and
  - (c) omit the word “and” immediately preceding paragraph (b).
- (3) In paragraph (b) of that sub-paragraph, for the words preceding sub-paragraph (i) (which relate to beneficial ownership at any time in or before the accounting period in question) substitute—
- “(b) at any time in that period there is a person who stands in the position of a creditor as respects that security and who at that time is—”.
- (4) At the end of paragraph (b) of that sub-paragraph add “; and
- (c) the debt is not one that is owed to, or to persons acting for, a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.”.
- (5) After sub-paragraph (1) insert—
- “(1A) But for any such accounting period this paragraph shall not apply in relation to that debtor relationship if—
- (a) at all times in the period when there is such a person as is described in sub-paragraph (1)(b) above, that person is a company; and
  - (b) credits representing the full amount of the discount that is referable to the period are brought into account for the purposes of this Chapter in respect of the corresponding creditor relationship.”.
- (6) For sub-paragraph (2) (debts not to be brought into account by the issuing company for any accounting period before that in which the security is redeemed) substitute—
- “(2) The debits falling in the case of the issuing company to be brought into account for the purposes of this Chapter in respect of the loan relationship shall be adjusted so that every debit relating to the amount of the discount that is referable to the relevant period (“the relevant debits”) is brought into account for the accounting period in which the security is redeemed, instead of for the relevant period.
- This sub-paragraph does not apply where the relevant period is the accounting period in which the security is redeemed.
- (2A) Where at some (but not all) times in the relevant period there is such a person as is described in sub-paragraph (1)(b) above—
- (a) part only of the relevant debits shall be brought into account in accordance with sub-paragraph (2) above; and
  - (b) that part is the part which bears to the whole of the relevant debits the proportion which the part of the relevant period for which there is such a person bears to the whole of that period.”.
- (7) After sub-paragraph (2A) insert—
- “(2B) References in this paragraph to the amount of the discount that is referable to an accounting period are references to the amount relating to the difference between—

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (a) the issue price of the security, and
  - (b) the amount payable on redemption,which (apart from sub-paragraphs (2) and (2A) above) would for that accounting period be brought into account for the purposes of this Chapter in the case of the issuing company.”.
- (8) After sub-paragraph (2B) insert—
  - “(2C) Any reference in this paragraph to a person who stands in the position of a creditor as respects a relevant discounted security includes a reference to a person who indirectly stands in that position by reference to a series of relevant discounted securities.
  - (2D) Where this paragraph applies by virtue of sub-paragraph (2C) above, the reference to the corresponding creditor relationship in sub-paragraph (1A)(c) above is a reference to the creditor relationship of the person who indirectly stands in the position of a creditor as respects the relevant discounted security.”.
- (9) After sub-paragraph (3) insert—
  - “(3A) For the purposes of this paragraph there is a connection between one company and another for an accounting period if—
    - (a) there is a time in that period when one of the companies has had control of the other, or
    - (b) there is a time in that period when both the companies have been under the control of the same person.
  - (3B) In this paragraph “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).”.
- (10) In sub-paragraph (4)(definitions) omit the definition of “control”.
- (11) In that sub-paragraph, in the definition of “participator”—
  - (a) after ““participator”” insert “, in relation to a company, ”; and
  - (b) for the words from “by virtue only” to the end of the definition substitute “by reason only that he is a loan creditor of the company. ”.

### *Partnerships involving companies*

35 In Schedule 9, after paragraph 18 insert—

#### **“Partnerships involving companies**

- 19 (1) This paragraph applies where—
  - (a) a trade, profession or business is carried on by persons in partnership (“the firm”);
  - (b) any of those persons is a company (a “company partner”); and
  - (c) a money debt is owed by or to the firm.
- (2) In any such case—
  - (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if

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*Status: Point in time view as at 24/07/2002.*

**Changes to legislation:** *There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- the partnership were a company) no debits or credits shall be brought into account under this Chapter in relation to the money debt or any loan relationship that would fall to be treated for the purposes of the computation as arising from the money debt; but
- (b) debits and credits shall be brought into account under this Chapter in relation to the money debt (and any loan relationship treated as arising from it) in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in sub-paragraph (1) above are satisfied.
- (3) The debits and credits to be brought into account as mentioned in sub-paragraph (2)(b) above shall be determined separately in the case of each company partner.
- (4) For the purpose of determining those debits and credits in the case of any particular company partner—
- (a) the money debt owed by or to the firm shall be treated as if it were instead owed by or, as the case may be, to that company partner, for the purposes of the trade, profession or business which that company partner carries on,
- (b) the money debt shall continue to be regarded as arising from a transaction for the lending of money if that is in fact the case (so that the company partner is treated as having a loan relationship), and
- (c) anything done by or in relation to the firm in connection with the money debt shall be treated as done by or in relation to the company partner,
- and debits and credits (the “gross debits and credits”) shall be determined accordingly.
- (5) The debits and credits to be brought into account under this Chapter pursuant to sub-paragraph (2)(b) above in the case of any particular company partner shall be that company partner’s appropriate share of the gross debits and credits determined in accordance with sub-paragraph (4) above in the case of that company partner.
- (6) For the purposes of sub-paragraph (5) above, the “appropriate share”, in the case of a company partner, is the share that would be apportioned to that company partner if—
- (a) the gross debits and credits determined in accordance with sub-paragraph (4) above in the case of that company partner fell to be apportioned between the partners; and
- (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section.
- (7) If, in a case where the money debt owed by or to the firm arises from a transaction for the lending of money, there is a time in an accounting period of any company at which—
- (a) a person who is a company partner stands in relation to the debt in the position of a creditor (if it is owed by the firm) or a



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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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debtor (if it is owed to the firm) and accordingly has a creditor relationship or debtor relationship (as the case may be),

(b) that company partner, whether alone or taken together with one or more other company partners connected with it, controls the partnership, and

(c) that or any other company partner falls to be treated in accordance with sub-paragraph (4) above as if it had the debtor relationship or creditor relationship that corresponds to the creditor relationship or debtor relationship mentioned in paragraph (a) above,

sub-paragraph (8) below shall apply with respect to that accounting period, if it is an accounting period of a company partner mentioned in paragraph (a) or (c) above.

(8) Where this sub-paragraph applies, there shall be taken for the purposes of this Chapter to be a connection by virtue of section 87(3)(a) of this Act for the accounting period of the company partner mentioned in paragraph (a) of sub-paragraph (7) above, between that company partner and each company partner (including that company partner) that falls within paragraph (c) of that sub-paragraph.

(9) For the purposes of sub-paragraph (7) above, one company partner is connected with another at any time in an accounting period if at that or any other time in the accounting period one controls the other or both are under the control of the same person.

(10) The only accounting method authorised for use by a company partner in determining the debits and credits to be brought into account under this paragraph is an authorised accruals basis of accounting, but this sub-paragraph is subject to sub-paragraph (11) below.

(11) Where the company partner uses an authorised mark to market basis of accounting in relation to its interest in the partnership, the only accounting method authorised for use in determining the debits and credits to be brought into account under this paragraph by that company partner is an authorised mark to market basis of accounting, unless a provision of this Chapter requires the use of an authorised accruals basis of accounting.

(12) Subsection (3) of section 84A of this Act does not apply in relation to a company partner as respects the debits and credits to be brought into account by virtue of this paragraph except to the extent that, in the accounts of the firm, exchange gains and losses are carried to or sustained by a reserve in a manner corresponding to that described in that section in relation to a company.

(13) Where the firm holds a relevant discounted security, within the meaning of paragraph 17 above, each of the partners shall be treated for the purposes of this paragraph as beneficially entitled to that share of the security to which he would be entitled if all the partners were companies and such an apportionment as is described in sub-paragraph (6)(b) above were made.

(14) In this paragraph “control”—

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (a) in relation to a company, has the same meaning as in section 87 of this Act (see section 87A); and
- (b) in relation to a partnership, has the meaning given by section 840 of the Taxes Act 1988.”

*Interpretation of Schedule 9: “major interest”*

36 In Schedule 9, after paragraph 19 insert—

**“Interpretation of references to major interests**

- 20 (1) For the purposes of any provision which applies this paragraph, the cases where a company (“company A”) has a major interest in another company (“company B”) at any time are those cases where at that time—
- (a) company A and one other person, taken together, have control of company B;
  - (b) company A and the other person each have interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which company A and the other person fall to be taken as having control of company B; and
  - (c) company A, or a company connected with it, and the other person, or, if that person is a company, a company connected with it, both satisfy the first condition, or both satisfy the second condition, in sub-paragraph (2) below.
- (2) A person—
- (a) satisfies the first condition if he stands in the position of a creditor in relation to a loan relationship as respects which company B stands in the position of a debtor; and
  - (b) satisfies the second condition if he stands in the position of a debtor in relation to a loan relationship as respects which company B stands in the position of a creditor.
- (3) The reference in sub-paragraph (1)(b) above to interests, rights and powers does not include interests, rights or powers arising from shares held by a company if—
- (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company; and
  - (b) the shares are not, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988, assets of an insurance company’s long-term insurance fund (see section 431(2) of that Act).
- (4) For the purposes of sub-paragraph (1) above, any question—
- (a) whether two persons taken together have control of a company at any time, or
  - (b) whether a person has at any time interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of a company,
- shall be determined after attributing to any person which is a company all the interests, rights and powers of any company connected with it.

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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(5) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this paragraph, as respects any time in an accounting period of the partnership, as if—

- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
- (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section,

but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.

(6) Where a trade, profession or business is carried on by two or more persons in partnership (“the firm”) and the firm stands in the position of a creditor or debtor as respects a money debt, any question—

- (a) whether a company has a major interest (within the meaning of this paragraph) in another company for an accounting period in the case of a loan relationship, or
- (b) to what extent any amount is to be treated under this Chapter in any particular way as a result of a company having, or (as the case may be) not having, such a major interest in another company,

shall be determined as if to the extent of his appropriate share each of the partners separately, instead of the firm, stood in the position of a creditor or, as the case may be, debtor as respects the money debt.

The reference in the words following paragraph (b) above to partners does not include a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.

(7) For the purposes of sub-paragraph (6) above, a partner’s “appropriate share” is the share that would be apportioned to him if an apportionment were made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 for the accounting period in question would be apportioned between the partners under subsection (2) of that section.

(8) For the purposes of this paragraph, a company is connected with another company if one controls the other or both are controlled by the same company.

(9) For the purposes of this paragraph, “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).

(10) Where two or more persons taken together have the power mentioned in subsection (1) of section 87A of this Act (as read with the other

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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provisions of that section) they shall be taken for the purposes of subparagraph (1)(a) above to have control of the company in question.”.

*Investment trusts and venture capital trusts: treatment of capital reserves*

- 37 (1) Schedule 10 (collective investment schemes) is amended as follows.  
(2) For paragraph 1 substitute—

**“Investment trusts and venture capital trusts: capital reserves**

- 1A (1) Where any profits, gains or losses arising to an investment trust from a creditor relationship for an accounting period are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for that accounting period, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (2) Where any profits, gains or losses arising to a venture capital trust from a creditor relationship for an accounting period—
- (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period as if the venture capital trust were an investment trust, or
  - (b) would be carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using that Statement of Recommended Practice,
- those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (3) For the purposes of this paragraph, the “Statement of Recommended Practice” used for an accounting period is—
- (a) in relation to an accounting period for which it is permitted to be used, the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in December 1995, as from time to time modified, amended or revised, or
  - (b) in relation to any accounting period for which it is permitted to be used, any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.”.

*Authorised unit trusts and open-ended investment companies*

- 38 (1) Schedule 10 (collective investment schemes) is amended as follows.  
(2) For paragraph 2 (which makes special provision in relation to authorised unit trusts and is applied to open-ended investment companies by regulations under section 152 of the Finance Act 1995 (c. 4)) and the heading immediately preceding it substitute—

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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### **“Authorised unit trusts**

- 2A (1) Where any profits, gains or losses arising to an authorised unit trust from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under—
- (a) the heading “net gains/losses on investments during the period”, or
  - (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period.
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means—
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised; or
  - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to authorised unit trust schemes, as from time to time modified, amended or revised.
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.
- (6) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases; and
  - (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).

### **Open-ended investment companies**

- 2B (1) Where any profits, gains or losses arising to an open-ended investment company from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under—
- (a) the heading “net gains/losses on investments during the period”, or
  - (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period.
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means—
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised; or
  - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to open-ended investment companies, as from time to time modified, amended or revised.
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.
- (6) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases; and
  - (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).”.

### *Distributing offshore funds*

39 For paragraph 3 of that Schedule substitute—

- “3 (1) For the purposes of paragraph 5(1) of Schedule 27 to the Taxes Act 1988 (computation of UK equivalent profit), the assumptions to be made in determining what, for any period, would be the total profits of an offshore fund are to include the assumptions in sub-paragraphs (2) and (3) below.
- (2) The first assumption is that the provisions of this Chapter so far as they relate to the creditor relationships of a company do not apply for the purposes of corporation tax in computing the profits or loss of an offshore fund.

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (3) The second assumption is that for the purposes of corporation tax the profits and gains, and losses, that are to be taken to arise from the creditor relationships of an offshore fund are to be computed—
- (a) in accordance with the provisions applicable, in the case of unauthorised unit trusts, for the purposes of income tax; and
  - (b) as if the provisions so applicable had effect in relation to an accounting period of an offshore fund as they have effect, in the case of unauthorised unit trusts, in relation to a year of assessment.
- (4) In this paragraph “unauthorised unit trust” means the trustees of any unit trust scheme which is not an authorised unit trust but is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988.”.

#### *Life assurance business*

- 40 (1) In Schedule 11 (loan relationships: special provisions for insurers) Part 1 (insurance companies) is amended as follows.
- (2) In paragraph 1 (I minus E basis) after sub-paragraph (1) (which provides that nothing in the Chapter prevents profits and gains from loan relationships of insurance companies referable to life assurance business from being included in profits and gains chargeable in accordance with the I minus E basis) insert—
- “(1A) Where—
- (a) the I minus E basis is applied for any accounting period in respect of any life assurance business carried on by an insurance company, and
  - (b) in that accounting period the insurance company is a party to a loan relationship which is to any extent referable to that business,
- then, in applying the I minus E basis to that business, sections 92(1)(f), 93(1)(a) and (b) and 96(1)(b) of this Act shall be disregarded in relation to that loan relationship to that extent.”.

#### *Adjustments in the case of chargeable assets etc*

- 41 (1) In Schedule 15 (loan relationships: savings and transitional provisions) paragraph 11 is amended as follows.
- (2) After sub-paragraph (2) insert—
- “(2A) If, in a case where the continuing loan relationship is a creditor relationship,
- (a) the company acquired its rights under the relationship on or before 31st March 1996 by virtue of an arm’s length transaction,
  - (b) for the accounting period in which it acquired those rights—
    - (i) there was no connection (as defined in sub-paragraph (2C) below) between the company and the person from whom the company acquired the asset, but
    - (ii) there was such a connection between the company and a company standing in the position of a debtor as respects the money debt, and

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*Status: Point in time view as at 24/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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- (c) there had been no such connection between the companies mentioned in paragraph (b)(ii) above at any time in the period which—
- (i) begins 4 years before the date on which the company acquired those rights, and
  - (ii) ends twelve months before that date,
- this paragraph shall have effect as if the amount mentioned in sub-paragraph (2)(b) above were an amount equal to the greater of the amounts mentioned in sub-paragraph (2B) below.

(2B) Those amounts are—

- (a) the fair value of the rights at the time when the company ceases to be a party to the loan relationship; and
- (b) the fair value of the rights on 1st April 1996.

(2C) For the purposes of sub-paragraph (2A) above there is a connection between a company and another person at any time if at that time—

- (a) the other person is a company and one of the companies has control of the other,
- (b) the other person is a company and both companies are under the control of the same person, or
- (c) the company is a close company and the other person is a participator in that company or the associate of a person who is such a participator,

and there is a connection between a company and another person for an accounting period if there is a connection (within paragraphs (a) to (c) above) between the company and the person at any time in that accounting period.

(2D) For the purposes of sub-paragraph (2C) above—

- (a) subsections (2) to (6) of section 416 of the Taxes Act 1988 (meaning of control) shall apply as they apply for the purposes of Part 11 of that Act;
- (b) subject to paragraph (c) below, “participator” and “associate” have the meaning given for the purposes of that Part by section 417 of that Act;
- (c) a person shall not be regarded as a participator in relation to a company by reason only that he is a loan creditor of the company.”.

*Reduction of paragraph 11 credit where s.251(4) of 1992 Act prevents paragraph 8 loss*

42 In Schedule 15, after paragraph 11 (other adjustments in the case of chargeable assets etc) insert—

**“Reduction of paragraph 11 credit where s.251(4) of 1992 Act prevents paragraph 8 loss**

- 11A (1) This paragraph applies where, in the case of any asset representing in whole or in part a loan relationship of a company, an amount representing a deemed allowable loss would (apart from this paragraph) fall or have fallen to be brought into account in accordance with paragraph 8(3) above for an accounting period (whenever beginning or



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*Status: Point in time view as at 24/07/2002.*

**Changes to legislation:** *There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

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ending), but for section 251(4) of the 1992 Act (no allowable loss on disposal of debt acquired from connected person).

- (2) Where this paragraph applies, the amount of any credit falling within sub-paragraph (3) below shall be treated for the purposes of this Chapter as reduced (but not below nil) by the amount described in sub-paragraph (1) above.
- (3) A credit falls within this sub-paragraph if (apart from this paragraph)—
  - (a) the credit falls to be given by virtue of paragraph 11(3)(a) above for an accounting period beginning on or after 1st October 2002; and
  - (b) the loan relationship mentioned in paragraph 11(1)(a) above in the case of the credit is the same loan relationship as the one mentioned in sub-paragraph (1) above.”.

**Status:**

Point in time view as at 24/07/2002.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2002, Part 1.