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## SCHEDULES

### SCHEDULE 1

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 2

#### OTHER ENACTMENTS

##### *Capital Allowances Act 2001 (c. 2)*

- 396 The Capital Allowances Act 2001 is amended as follows.
- 397 (1) Amend section 4 (capital expenditure) as follows.
- (2) In subsection (4) for “section 348 or 349(1) of ICTA (annual payments)” substitute “ Chapter 6 of Part 15 of ITA 2007 (deduction from annual payments or patent royalties) or under section 906 of that Act (certain royalties etc where usual place of abode of owner is abroad) ”.
- (3) Omit subsection (5).
- 398 In section 70V(4) (tax avoidance involving international leasing) for “Chapter 1” to the end substitute “ section 840ZA of ICTA ”.
- 399 Omit section 70YI(4) (application of section 839 of ICTA).
- 400 In section 138(2)(b) (limit on amount deferred) for “section 385 or” substitute “ section 83 of ITA 2007 or section ”.
- 401 In section 156(1)(a) and (c) (connected persons) for “section 839 of ICTA” substitute “ section 575 ”.
- 402 In section 220(8)(a) (allocation of expenditure to a chargeable period) omit “, within the meaning of section 840 of ICTA”.
- 403 In section 232(1)(a) (meaning of connected person) for “section 839 of ICTA” substitute “ section 575 ”.
- 404 In section 258 (special leasing: income tax) after subsection (3) insert—
- “(3A) The allowance or (as the case may be) the proportionate part of the allowance is given effect at Step 2 of the calculation in section 23 of ITA 2007.”
- 405 In section 266(5)(a) (election where predecessor and successor are connected persons) for “section 839 of ICTA” substitute “ section 575 ”.
- <sup>F1</sup>406 .....

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### Textual Amendments

**F1** Sch. 1 para. 406 omitted (21.7.2008 with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 27 para. 27\(4\)](#)

407 In section 437 (research and development allowances) for subsection (2) substitute—

“(2) In this Part “research and development”—

- (a) means activities that fall to be treated as research and development in accordance with generally accepted accounting practice, and
- (b) includes oil and gas exploration and appraisal.

(3) But—

- (a) activities that, as a result of regulations made under section 1006 of ITA 2007, are “research and development” for the purposes of that section are also “research and development” for the purposes of this Part, and
- (b) activities that, as a result of any such regulations, are not “research and development” for the purposes of that section are also not “research and development” for the purposes of this Part.”

408 In section 479 (persons having qualifying non-trade expenditure: income tax) after subsection (2) insert—

“(2A) The allowance is given effect at Step 2 of the calculation in section 23 of ITA 2007.”

409 At the beginning of Chapter 6 of Part 12 insert—

### *“Orders and regulations*

#### **Orders and regulations made by Treasury or Commissioners**

570~~B~~) Any orders or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Act must be made by statutory instrument.

(2) Any orders or regulations made by the Treasury or the Commissioners under this Act are subject to annulment in pursuance of a resolution of the House of Commons.

(3) Subsection (2) does not apply to any regulations made under section 70YJ or any order made under section 82(4)(d).”

410 In section 574(1) at the end insert “(but, for the purposes of section 575, this definition applies only where expressly indicated)”.

411 For section 575 (connected persons) substitute—

#### **“575 Meaning of “connected” persons**

(1) For the purposes of this Act whether a person is connected with another is determined in accordance with this section unless otherwise indicated.

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- (2) An individual (“A”) is connected with another individual (“B”) if—
- (a) A is B's spouse or civil partner,
  - (b) A is a relative of B,
  - (c) A is the spouse or civil partner of a relative of B,
  - (d) A is a relative of B's spouse or civil partner, or
  - (e) A is the spouse or civil partner of a relative of B's spouse or civil partner.
- (3) A person, in the capacity as trustee of a settlement, is connected with—
- (a) any individual who is a settlor in relation to the settlement,
  - (b) any person connected with such an individual,
  - (c) any close company whose participators include the trustees of the settlement,
  - (d) any non-UK resident company which, if it were UK resident, would be a close company whose participators include the trustees of the settlement,
  - (e) any body corporate controlled (within the meaning of section 574) by a company within paragraph or ,
  - (f) if the settlement is the principal settlement in relation to one or more sub-fund settlements, a person in the capacity as trustee of such a sub-fund settlement, and
  - (g) if the settlement is a sub-fund settlement in relation to a principal settlement, a person in the capacity as trustee of any other sub-fund settlements in relation to the principal settlement.
- (4) A person who is a partner in a partnership is connected with—
- (a) any partner in the partnership,
  - (b) the spouse or civil partner of any individual who is a partner in the partnership, and
  - (c) a relative of any individual who is a partner in the partnership.

But this subsection does not apply in relation to acquisitions or disposals of assets of the partnership pursuant to genuine commercial arrangements.

- (5) A company is connected with another company if—
- (a) the same person has control of both companies,
  - (b) a person (“A”) has control of one company and persons connected with A have control of the other company,
  - (c) A has control of one company and A together with persons connected with A have control of the other company, or
  - (d) a group of two or more persons has control of both companies and the groups either consist of the same persons or could be so regarded if (in one or more cases) a member of either group were replaced by a person with whom the member is connected.
- (6) A company is connected with another person (“A”) if—
- (a) A has control of the company, or
  - (b) A together with persons connected with A have control of the company.

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- (7) In relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with—
- (a) one another, and
  - (b) any person acting on the directions of any of them to secure or exercise control of the company.

**575A Section 575: supplementary**

- (1) In section 575 and this section—
- “company” includes any body corporate or unincorporated association, but does not include a partnership (and see also subsection (2)),
- “control” is to be read in accordance with section 416 of ICTA (except where otherwise indicated),
- “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
- “relative” means brother, sister, ancestor or lineal descendant,
- “settlement” has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act), and
- “sub-fund settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992.
- (2) For the purposes of section 575—
- (a) a unit trust scheme is treated as if it were a company, and
  - (b) the rights of the unit holders are treated as if they were shares in the company.
- (3) For the purposes of section 575 “trustee”, in the case of a settlement in relation to which there would be no trustees apart from this subsection, means any person—
- (a) in whom the property comprised in the settlement is for the time being vested, or
  - (b) in whom the management of that property is for the time being vested.

Section 466(4) of ITA 2007 does not apply for the purposes of this subsection.

- (4) If any provision of section 575 provides that a person (“A”) is connected with another person (“B”), it also follows that B is connected with A.”

- 412 In section 577(1) (other definitions)—
- (a) omit the definition of “tax year”, and
  - (b) omit the definition of “the tax year 2001-02”.

- 413 (1) Amend Schedule 1 (abbreviations and defined expressions) as follows.
- (2) In Part 1 in the appropriate place insert—

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“ITA 2007

The Income Tax Act 2007.”

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- (3) In Part 2—

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- (a) in the entry for “body of persons”, in the second column, before “section 832(1) of ICTA” insert “ section 989 of ITA 2007 and ”,
- (b) in the entry for “connected persons (general meaning)”, in the second column, for “section 575(1)” substitute “ section 575 ”,
- (c) in the entry for “offshore installation”, in the second column, before “section 837C of ICTA” insert “ sections 1001 and 1002 of ITA 2007 and ”,
- (d) in the entry for “overseas property business”, in the second column, at the end insert “ (as applied by section 989 of ITA 2007) ”,
- (e) in the entry for “research and development”, in the second column, for “437(2) and section 837A of ICTA” substitute “ 437(2) and (3) ”,
- (f) in the entry for “Schedule A business”, in the second column, before “section 832(1) of ICTA” insert “ section 989 of ITA 2007 and ”,
- (g) in the entry for “tax year”, in the second column, for “section 577(1)” substitute “ section 4(2) of ITA 2007 (as applied by section 989 of that Act) ”,
- (h) in the entry for “UK property business”, in the second column, omit “section 832(1) of ICTA and” and at the end insert “ (as applied by section 989 of ITA 2007) ”,
- (i) in the entry for “United Kingdom”, in the second column, for “section 830 of ICTA and section 41 of ITEPA 2003” substitute “ section 1013 of ITA 2007 and section 830(1) of ICTA ”, and
- (j) in the entry for “within the charge to tax”, in the second column, before “section 832(1) of ICTA” insert “ section 1009 of ITA 2007 and ”.

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