SCHEDULES

SCHEDULE 7

MISCELLANEOUS RELOCATIONS

PART 12

RELOCATION OF SCHEDULE 12 TO F(NO.2)A 1992 SO FAR AS APPLYING FOR INCOME TAX PURPOSES

Finance (No.2) Act 1992 (c. 48)

63 F(No.2)A 1992 is amended as follows.

64 Omit section 66 (which introduces Schedule 12).

65 Omit Schedule 12 (banks etc in compulsory liquidation).

Income Tax (Trading and Other Income) Act 2005 (c. 5)

66 ITTOIA 2005 is amended as follows.

67 In section 369 (charge to tax on interest) after subsection (4) insert—

"(5) See also Chapter 3A of Part 14 of ITA 2007 (which provides for the receipts of certain types of company being wound up to be charged to income tax under that Chapter instead of under any other provision that would otherwise apply)."

Income Tax Act 2007 (c. 3)

68 ITA 2007 is amended as follows.

69 In section 2(14) (overview of Act: Part 14) after paragraph (c) insert ", and

(d) imposition of the charge to income tax on the receipts of certain types of company being wound up (Chapter 3A)."

70 In section 3(2) (overview of charges to income tax)—

(a) omit the "and" immediately before paragraph (e), and

(b) after paragraph (e) insert ", and

(f) Chapter 3A of Part 14 of this Act (banks etc in compulsory liquidation)."

71 After section 837 insert—

“CHAPTER 3A

BANKS ETC IN COMPULSORY LIQUIDATION

837A Overview of Chapter

(1) This Chapter provides for the receipts of certain types of company being wound up to be charged to income tax.

(2) For provision charging the receipts of such companies to corporation tax, see Chapter 6 of Part 13 of CTA 2010.

837B Application of Chapter

(1) This Chapter applies if—
  (a) a company is being or has been wound up by the court in the United Kingdom, and
  (b) conditions A, B and C are met.

(2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as—
  (a) a person of the kind mentioned in paragraph (b) of the definition of “bank” in section 991(2) (persons with permission under Part 4 of FISMA 2000 to accept deposits), or
  (b) a permitted EEA credit institution.

(3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the “deposit-taking trade”).

(4) Condition C is that the company is insolvent and—
  (a) was so when the winding up proceedings started, or
  (b) became so at any time in the period of 12 months following the day on which those proceedings started.

(5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of—
  (a) the day on which the winding up proceedings started, and
  (b) the day on which the company permanently ceased to carry on the deposit-taking trade.

(6) In subsection (2)(b) a “permitted EEA credit institution” means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institutions authorised by home state regulator) which has permission to accept deposits under paragraph 15 of that Schedule.

837C Charge to income tax on winding up receipts

(1) Winding up receipts arising from the deposit-taking trade are chargeable to income tax.

(2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.

(3) A "winding up receipt" means (subject to subsection (4)) a sum received by the company or its liquidator after—

(a) the start of the winding up proceedings, or

(b) if later, the permanent cessation of the deposit-taking trade.

(4) The following are not winding up receipts—

(a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and

(b) a sum realised by the transfer of an asset required to be valued under section 173 of ITTOIA 2005 (valuation of trading stock on cessation).

837D Transfer of rights to payment

(1) This section applies if—

(a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and

(b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.

(2) If the transfer is at arm's length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.

(3) If the transfer is not at arm's length, this Chapter has effect as if the value of the right transferred as between parties at arm's length were a winding up receipt arising from the deposit-taking trade.

837E Allowable deductions

(1) In calculating the amount on which income tax is charged under this Chapter for a tax year, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to income tax under this Chapter.

(2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the tax year (but subject to subsections (4) and (5)).

(3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so—

(a) would have been deducted in calculating the profits of the trade for income or corporation tax purposes, or

(b) would have been deducted from or set off against the profits of the trade for income or corporation tax purposes.

(4) No deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.

(5) A loss, expense or debit is only within subsection (3) if incurred—

(a) after the start of the winding up proceedings or, if later, the permanent cessation of the deposit-taking trade, or

(b) in the case of a loss, at or before the permanent cessation of the deposit-taking trade.

(6) No deduction for an amount is allowed under this section if the amount has already been allowed (whether under this section or under any other provision of the Tax Acts).

837F Election to carry back

(1) This section applies if a winding up receipt arising from the deposit-taking trade is received in a tax year beginning no later than 6 years after the company permanently ceased to carry on the trade.

(2) The company or its liquidator may elect that the income tax chargeable under this Chapter in respect of the receipt is to be charged as if the receipt has been received on the date of the cessation.

(3) The election must be made before the end of the period of two years beginning immediately after the end of the tax year in which the receipt is received.

(4) If an election is made under this section an assessment to income tax must be made accordingly (regardless of anything in the Income Tax Acts).

837G Relationship of Chapter with other income tax provisions

If a winding up receipt arising from the deposit-taking trade is chargeable to income tax under this Chapter it is not chargeable to income tax under any other provision.

837H Interpretation of Chapter

(1) This section applies for the purposes of this Chapter.

(2) There is the permanent cessation of a company's trade if—

(a) the company ceases to carry on the trade, or

(b) the company ceases to be within the charge to corporation tax in respect of the trade,

whether or not the trade is in fact ceased.

(3) A company is insolvent at any time if at that time—

(a) it is unable to pay its debts as they fall due, or

(b) the value of its assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(4) "Company" means—

(a) a company as defined in section 1(1) of the Companies Act 2006, or

(b) an unregistered company as defined in section 220 of the Insolvency Act 1986 or Article 184 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

(5) For the meaning of “deposit-taking trade” and “winding up receipt”, see sections 837B(3) and 837C(3) respectively.”

72 In Schedule 4 (index of defined expressions) at the appropriate places insert—

“company (in Chapter 3A of Part 14)	section 837H(4)”
“deposit-taking trade (in Chapter 3A of Part 14)	section 837B(3)”
“winding up receipt (in Chapter 3A of Part 14)	section 837C(3)”

Changes to legislation:
There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 12.