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## SCHEDULES.

### SCHEDULE 11

#### AMENDMENTS OF CORPORATION TAX ACTS

##### PART I

##### GENERAL

###### *Life assurance business: relief for management expenses*

- 1 (1) In section 69(2) of the Finance Act 1965 (which restricts relief for management expenses for life assurance companies not charged to tax under Case I of Schedule D by reference to the corporation tax which would be payable if they were so charged) the following shall be substituted for the words from the beginning of the subsection to the end of paragraph (b):—

“(2) Relief in respect of management expenses shall not be given to any such company, whether under section 62 of this Act or under subsection (1) above, so far as it would, if given in addition to all other reliefs to which the company is entitled, reduce the income tax and corporation tax borne by the company on the income and gains of its life assurance business for any accounting period to less than would have been paid if the company had been charged to tax in respect of that business under Case I of Schedule D ; and where relief has been withheld in respect of any accounting period by virtue of this subsection, the excess to be carried forward by virtue of section 57(2) of this Act shall be increased accordingly.”

- (2) Sub-paragraph (1) above shall have effect for accounting periods ending on or after 6th April 1966.

###### *Life assurance business: repayment of tax on investment income*

- 2 (1) Section 69(7) of the Finance Act 1965 (which prohibits, in general, the repayment of income tax on the policy holders' share of the franked investment income from investments held in connection with a company's life assurance business) shall have effect in relation to any income as if, for the reference to such part of it as belongs or is allocated to, or is reserved for or expended on behalf of, policy holders, there were substituted a reference to the part of it specified in sub-paragraph (3) below.
- (2) Section 427(2) of the Income Tax Act 1952 (under which, where the tax on its investment income exceeds seven shillings and sixpence in the pound, a company is entitled, notwithstanding the said section 69(7), to repayment of the excess on the policy holders' share) shall have effect in relation to any income as if, for the references in paragraphs (a) and (b) to such part of it as, in the opinion of the Commissioners, belongs or is allocated to, or is reserved for or expended on behalf of, policy holders, there were substituted references to the part specified in sub-

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paragraph (3) below of so much of that income as has not been excluded from charge to tax by virtue of any provision and against which no relief has been allowed by deduction or set-off.

- (3) The said part shall be, in the case of any income, the same fraction of it as the fraction which, on a computation of the profits of the company in respect of its life assurance business in accordance with the provisions applicable to Case I of Schedule D (whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods) would be connoted by the words in section 427(1) of the said Act of 1952 " such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants ":

Provided that, if the income exceeds the profits as computed in accordance with those provisions other than the said section 427(1), the said part shall be that fraction of the income so far as not exceeding the profits, together with the amount of the excess.

- (4) Sub-paragraph (2) above shall not affect the said section 427(2) as it applies by virtue of the said section 69 to chargeable gains.
- (5) Sub-paragraphs (1) and (2) above shall have effect, as respects income tax, for the year 1966-67 as well as subsequent years of assessment and, as respects corporation tax, for accounting periods ending on or after 6th April 1965.
- (6) For the avoidance of doubt, it is hereby declared that the reference in the said section 69(7) to repayment of income tax includes a reference to the setting off of income tax against tax which the company is liable to pay in respect of its own distributions.
- (7) The said section 69(7), as amended by sub-paragraph (1) above, shall not be taken to apply to repayments of income tax under section 62 of the said Act of 1965.
- (8) Paragraph 9(3) of Schedule 5 to the Finance Act 1966 (which provides that franked investment income by virtue of which annuities have been treated as charges on income shall be left out of account under section 48 of the said Act of 1965) shall have effect, and be deemed always to have had effect, as if, for the words " shall be left out of account under section 48 of the Finance Act 1965 ", there were substituted the words " shall be income the tax on which is not available for set-off against income tax which the company is liable to pay in respect of its own distributions ".

*Company distributions: transfers between companies and their members or participators*

- 3 (1) Schedule 11 to the Finance Act 1965 (which defines company distributions for the purposes of Part IV of that Act) shall have effect, and be deemed always to have had effect, subject to the amendments specified in sub-paragraphs (2) and (3) below.
- (2) At the end of paragraph 1(2) of that Schedule (which relates to the transfer of assets and liabilities between companies and their members) there shall be inserted the following proviso:—

“Provided that, where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident (the question whether one body is another's subsidiary being determined as if for the purposes of section 48(3) of this Act, subject to the modification that a body shall be treated as not being the owner of any share capital which it

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owns directly if a profit on the sale of the shares would be treated as a trading receipt of that body), the said amount shall not be treated as a distribution.”

- (3) After the proviso to paragraph 9(2) of that Schedule (which relates to the provision by close companies of benefits for participators) there shall be inserted the following additional proviso:—

“And provided also that where—

- (a) the company and the participator are both resident in the United Kingdom and one is a subsidiary of the other or both are subsidiaries of a third company also so resident (the question whether one body is another's subsidiary being determined as if for the purposes of section 48(3) of this Act, subject to the modification that a body shall be treated as not being the owner of any share capital which it owns directly if a profit on the sale of the shares would be treated as a trading receipt of that body), and
- (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him or to the company by him,

the said amount shall not be treated as a distribution.”

- (4) If any amount would, but for sub-paragraph (2) or (3) above, be treated as, or as part of, a distribution made in or after the year 1966-67 and would as so treated constitute also the net amount of a relevant distribution within the meaning of section 65 of the Finance Act 1965 (dividend stripping) then, for the purposes of corporation tax in respect of any chargeable gains, that amount shall be treated as if it were a capital distribution (within the meaning of Part III of the Finance Act 1965) received in respect of the holding.
- (5) Sub-paragraphs (2) and (3) above shall not affect the meaning of 'distribution' for the purposes of paragraphs 5, 6(1) and 7 of Schedule 17 to the Finance Act 1965 (dividend stripping: relation of distributions to profits), except so far as the said sub-paragraphs (2) and (3) relieve the company from liability to account for income tax otherwise falling under paragraph 5(1) of the said Schedule 17 to be included in a distribution.
- (6) There shall be made all such adjustments by way of discharge or repayment of tax as are necessary to give effect to the preceding provisions of this paragraph.

#### *Dividend stripping*

- 4 (1) Section 65(6) of the Finance Act 1965 (election for treatment of dividends as group income: exclusion of relevant distributions) shall cease to have effect.
- (2) Section 65(3) of the Finance Act 1965 (relevant distribution received by a company which is not a dealer: net amount of relevant distribution to be treated as a capital distribution in respect of the holding) shall apply to group income as if in the phrase " the net amount of the relevant distribution " the word " net " were omitted.
- (3) The said section 65 shall be deemed always to have had effect subject to this paragraph, and there shall be made all such adjustments by way of discharge or repayment of tax as are necessary to give effect to its provisions.

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*Tax on company in liquidation*

- 5
- (1) In this paragraph references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.
  - (2) Corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at a rate which, subject to sub-paragraph (3) below, shall be the rate of corporation tax fixed for the penultimate year.
  - (3) If the affairs of the company are completely wound up before an Act is passed fixing the rate of corporation tax for its penultimate year, corporation tax shall be charged on the company's profits arising in the winding-up in its final year, and if the winding-up commenced before the final year, on the company's profits arising at any time in its penultimate year, at the rate of corporation tax fixed by the budget resolution for the penultimate year (and without regard to the rate fixed by any subsequent Act); and any assessment made by virtue of section 49(5) of the Finance Act 1965 (provisional rate of tax) shall be subject to any such adjustment, by discharge or repayment of tax or by a further assessment, as may be required to give effect to this sub-paragraph.
  - (4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.
  - (5) In making an assessment after the commencement of the winding up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 51(6) of the Finance Act 1965 (company's accounting period or accounting periods beginning with commencement of winding up).
  - (6) The assumption of the wrong date shall not alter the company's final and penultimate year, and if the right date is later an accounting period shall end on the date assumed, and a new accounting period shall begin and the said section 51(6) shall thereafter apply as if that new accounting period began with the commencement of the winding up.
  - (7) In this paragraph " budget resolution " means a resolution of the Committee of Ways and Means of the House of Commons, or of the House of Commons, for fixing the rate of corporation tax for the financial year in question, and if there is more than one such resolution, means the first of them.
  - (8) This paragraph shall have effect as respects any winding up completed after the passing of this Act.

*Close company: 35 per cent. test for quoted shares*

- 6
- (1) In paragraph 1(3) of Schedule 18 to the Finance Act 1965 (under which certain companies with quoted shares are not close companies) " beneficially held by the public " shall be construed in accordance with this paragraph, and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
  - (2) Shares shall be deemed to be beneficially held by the public if, and only if, sub-paragraph (3) below so provides, and if they are not within the exceptions in paragraph (a), (b) or (c) of the said paragraph 1(3) (shares held by a director of the

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company or his associate or by certain other companies) or within the exception in sub-paragraph (4) below.

- (3) Shares shall be deemed to be beneficially held by the public—
- (a) if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
  - (b) if held on trust for a fund or scheme approved under section 379 or section 388 of the Income Tax Act 1952 (superannuation funds and retirement schemes), or
  - (c) if they are not comprised in a principal member's holding.
- (4) Shares shall not be deemed to be held by the public if held as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) of the said paragraph 1(3).
- (5) In paragraphs (a), (b) and (c) of the said paragraph 1(3) references to shares held by any person include references to any shares the rights or powers attached to which could be attributed to that person under paragraph 3(3) of Schedule 18 to the Finance Act 1965.
- (6) The said paragraph 1(3) shall not apply at any time when the total percentage of the voting power in the company possessed by all the principal members of the company exceeds 85 per cent.
- (7) For the purposes of this paragraph a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages.
- (8) In arriving at the voting power which a person possesses there shall be attributed to him any voting power which would be attributed to him for the purposes of paragraph 3 of Schedule 18 to the Finance Act 1965 (definition of control) by sub-paragraphs (3) and (4) of that paragraph (nominees, controlled companies and associates).
- (9) A principal member's holding consists of the shares which carry the voting power possessed by him.
- (10) This paragraph shall be deemed to have come into force on 11th April 1967.

*Computation of close company's distributable profits*

- 7 (1) In paragraph 7(1) of Schedule 18 to the Finance Act 1965 for the words
- “(b) any franked investment income, less the amount of any relief given against it for management expenses or charges on income”
- there shall be substituted the words
- “(b) any franked investment income, less the amount of any relief given against it under subsection (1) or subsection (7) of section 62 of this Act”

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so that paragraph (b) refers to all relief under the said section 62, and not only to relief given under that section against management expenses or charges on income.

- (2) For the purposes of the said paragraph 7 as it applies to any company in any accounting period the amount on which corporation tax falls finally to be borne (but not the amount of that tax) shall be computed as if the said section 62 did not include subsection (5) of that section (which, as extended by subsection (6) of that section, makes an adjustment where in any year of assessment distributions exceed franked investment income so as to allow losses, allowances, management expenses or charges on income against which franked investment income arising in an earlier year of assessment has been set off to be carried forward).
- (3) This paragraph shall have effect as respects franked investment income arising in the year 1966-67 or in subsequent years of assessment.

*Close companies in liquidation*

- 8 (1) Sections 77 and 78 of the Finance Act 1965 (shortfall in distributions of close company, and apportionment for surtax of close company's income) shall, notwithstanding the winding-up of a company, or the passing of any resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.
- (2) Paragraph 12 of Schedule 18 to the Finance Act 1965 (modification of the required standard for ascertaining shortfall in distributions of close company) shall apply for any accounting period ending after the date of a winding-up resolution or other event mentioned in paragraph 13(1) of that Schedule.
- (3) Where any such event occurs in the case of a close company, then any assessment on the company in respect of a shortfall in distributions for an accounting period after that event shall be an assessment as for a distribution made immediately before the end of that accounting period, and the amount due under the assessment shall be recoverable accordingly.
- (4) Paragraph 13(3) of the said Schedule 18 (which is superseded by this paragraph) shall cease to have effect.
- (5) This paragraph has effect as respects accounting periods beginning after 11th April 1967.

*Close companies: "director" and "associate"*

- 9 It is hereby declared that in paragraph 6(2)(c) and paragraph 6(3) of Schedule 18 to the Finance Act 1965 (definitions of director) the expression "either on his own or with one or more associates" requires a person to be treated as owning or as the case may be controlling what any associate owns or controls even if he does not own or control share capital on his own, and that—
  - (a) in the proviso to the said paragraph 6(3) the expression "apportioned to him together with his associates (if any)", and
  - (b) in paragraph 18(1)(b) of Schedule 5 to the Finance Act 1966 (definition of associate) the expression "either on his own or with his relatives"
 have a corresponding meaning.