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SCHEDULES

SCHEDULE 12

CAPITAL GAINS

PART II

COMPANIES

Company amalgamations and reconstructions

- 15 (1) Paragraph 7 of Schedule 7 to the Finance Act 1965 shall be amended as follows.
- (2) Sub-paragraph (1) (issue of shares or debentures in one company to holders of shares or debentures in another company to be treated as an exchange in certain circumstances) shall apply after 10th April 1968, in relation to a company which has no share capital, as if references to shares in or debentures of a company included references to any interests in the company possessed by members of the company, and paragraphs 4 and 6 of the said Schedule 7 shall apply accordingly.
- (3) Sub-paragraph (2) (reconstruction or amalgamation involving transfer of a company's business) shall only apply to a transfer at a time after 10th April 1968 if both that company and the company to which the business is transferred are at that time resident in the United Kingdom.

Transfer of business to a company

- 16 Paragraph 8 of Schedule 7 to the Finance Act 1965 shall not apply to a transfer after 10th April 1968 if the person, or any of the persons, to whom any gain accrues on the transfer is a company.

Dividend-stripping: receipt of dividend by member of a group

- 17 (1) This paragraph has effect where section 65(3) of the Finance Act 1965 (main provisions about dividend-stripping) or paragraph 3(4) of Schedule 11 to the Finance Act 1967 (transfers between companies and their members or participators) applies so as to treat any amount as a capital distribution paid after 10th April 1968 if the recipient was, at the time when it became entitled to receive that amount, a member of a group of companies and if the holding consists of shares in another member of the group.
- (2) Paragraph 3(2) of Schedule 7 to the Finance Act 1965 (postponement of occasion of charge) shall apply as if the inspector had duly given a direction under that sub-paragraph, and that sub-paragraph shall apply accordingly, but subject to the provisions of paragraph 9 of Schedule 10 to the Finance Act 1966 (no postponement where there is no expenditure against which the distribution can be set off), and the

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said paragraph 9(1) shall apply as if it referred to the said paragraph 3(2) as extended by this paragraph.

Company ceasing to be member of a group

- 18 (1) If a company (in this paragraph called the chargeable company) ceases to be a member of a group of companies at any time after 10th April 1968, this paragraph shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell—
- (a) on or after 6th April 1965, and
 - (b) within the period of six years ending with the time when the company ceases to be a member of the group.

Where two or more associated companies cease to be members of the group at the same time, this sub-paragraph shall not have effect as respects an acquisition by one from another of those associated companies.

- (2) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—
- (a) the asset, or
 - (b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the chargeable company shall be treated for all the purposes of Part III of the Finance Act 1965 as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

- (3) For the purposes of this paragraph—
- (a) two or more companies are associated companies if, by themselves, they would form a group of companies,
 - (b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under section 33 of the Finance Act 1965, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,
 - (c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.
- (4) If any of the corporation tax assessed on a company in consequence of this paragraph is not paid within six months from the date when it becomes payable then—
- (a) a company which on the said date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and
 - (b) a company which owned the asset on the said date, or when the chargeable company ceased to be a member of the group,

may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of

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that tax ; and a company paying any amount of tax under this sub-paragraph shall be entitled to recover a sum of that amount from the chargeable company.

- (5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this paragraph may be made at any time within six years from the time when the chargeable company ceased to be a member of the group, and where under this paragraph the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this paragraph shall be carried out.

Shares in subsidiary member of a group

- 19 (1) This paragraph has effect if a company (in this paragraph called the subsidiary) ceases to be a member of a group of companies at any time after 10th April 1968, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this paragraph called " the chargeable company") which was then a member of that group in the course of an amalgamation or reconstruction in the group, but only if that earlier occasion fell—
- (a) on or after 6th April 1965, and
 - (b) within the period of six years ending with the date on which the subsidiary ceases to be a member of the group.
- (2) The chargeable company shall be treated, for all the purposes of Part III of the Finance Act 1965, as if immediately before the earlier occasion it had sold, and immediately re-acquired, the said shares at market value at that time.
- (3) If, before the subsidiary ceases to be a member of the group, the chargeable company has ceased to exist, or a resolution has been passed, or an order made, for the winding up of the company, or any other act has been done for the like purpose, any corporation tax to which, if the chargeable company had continued in existence, it would have been chargeable in consequence of this paragraph may be assessed and charged (in the name of the chargeable company) on the company which is, at the time when the subsidiary ceases to be a member of the group, the principal company of the group.
- (4) If any of the corporation tax assessed on a company in consequence of this paragraph, or in pursuance of sub-paragraph (3) above, is not paid within six months from the date when it becomes payable, then—
- (a) a company which is on the said date, or was on the earlier occasion, the principal company of the group, and
 - (b) any company taking an interest in the subsidiary as part of the amalgamation or reconstruction in the group,
- may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this sub-paragraph shall be entitled to recover a sum of that amount from the chargeable company, or as the case may be from the company assessed under sub-paragraph (3) above.
- (5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this paragraph may be made at any time within six years from the time when the subsidiary ceased to be a member of the group and, in relation to any disposal of the property after the earlier occasion,

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there shall be made all such adjustments of tax, whether by way Of assessment or by way of discharge or repayment of tax as may be required in consequence of the provisions of this paragraph.

- (6) For the purposes of this paragraph there is a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if paragraph 6 or paragraph 7 of Schedule 7 to the Finance Act 1965 (company amalgamations) applies to shares in a company so as to equate them with shares in or debentures of another company, and the companies are members of the same group, or become members of the same group as a result of the amalgamation or reconstruction.
- (7) Where by virtue of paragraph 7 of the said Schedule 7 shares are to be treated as cancelled and replaced by a new issue, references in this paragraph to a disposal of shares include references to the occasion of their being so treated.

Loss on disposal of shares etc. attributable to depreciatory transaction in a group

- 20 (1) This paragraph has effect as respects a disposal after 10th April 1968 of shares in, or securities of, a company if the value of the shares or securities has been materially reduced by any disposal of assets, on or after 6th April 1965, at other than market value by one member of a group of companies to another, and in this paragraph any such disposal of assets is called a " depreciatory transaction ":

Provided that no account shall be taken under this sub-paragraph of a disposal of assets if and to the extent that that disposal of assets fell to be treated as giving rise to a capital distribution within the meaning of Part III of the Finance Act 1965, and if the recipient of the capital distribution is the person disposing of the shares and securities.

- (2) If the person making the disposal of the shares or securities is, or has at any time been, a member of the said group of companies, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the depreciatory transaction:

Provided that if the person is not a member of the said group when that person disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of the said group.

- (3) The inspector or the Commissioners shall make the decision under sub-paragraph (2) above on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction if and so far as the effect of the transaction was to increase the value of the assets of any other member of the group, but allowance may be made for any other transaction on or after 6th April 1965 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.
- (4) If, under sub-paragraph (2) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than six years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable having regard to the effect

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of the depreciatory transaction on the value of those shares or securities at the time of their disposal:

Provided that the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this sub-paragraph may be made at any time.

- (5) For the purposes of this paragraph—
- " securities " includes any loan stock or similar security whether secured or unsecured, references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group, a
 - " group of companies " may consist of companies some or all of which are not resident in the United Kingdom.
- (6) References in this paragraph to the disposal of shares or securities include references to the occasion of the making of a claim under section 23(4) of the Finance Act 1965 that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

Disposal or acquisition outside a group of companies

- 21 (1) In paragraph 4 of Schedule 13 to the Finance Act 1965 (capital allowances) for the words
- “Where a member of a group of companies disposes of an asset” there shall be substituted the words
 - “Where a company which is or has been a member of a group of companies disposes of an asset”.
- (2) In paragraph 5 of the said Schedule 13 (transitional provisions as to assets held on 6th April 1965) for the words
- “in relation to a disposal of an asset by a member of a group of companies” there shall be substituted the words
 - “in relation to a disposal of an asset by a company which is or has been a member of a group of companies”.
- (3) References in the said paragraphs 4 and 5 to the acquisition of an asset by one member of a group from another shall, notwithstanding sub-paragraphs (1) and (2) above, continue to be read as references to acquisition at a time when both are members of the group.
- (4) This paragraph applies as respects any disposal after 10th April 1968.

Non-resident group of companies

- 22 (1) This paragraph has effect for the purposes of section 41 of the Finance Act 1965 (residents interested in non-resident company).

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- (2) Part I of Schedule 13 to the Finance Act 1965 (group of companies resident in the United Kingdom), without paragraph 1 (definition of company and group) and without paragraph 7 (recovery of tax), shall apply in relation to non-resident companies which are members of a non-resident group of companies, as it applies in relation to companies resident in the United Kingdom which are members of a group of companies.
- (3) Paragraphs 18 and 19 above shall apply for the said purposes as if for any reference in those paragraphs to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the United Kingdom.
- (4) This paragraph has effect as respects any disposal after 10th April 1968.

Supplemental

- 23 (1) For the purposes of this Part of this Schedule—
- (a) a " non-resident group " of companies—
 - (i) in the case of a group, none of the members of which are resident in the United Kingdom, means that group, and
 - (ii) in the case of a group, two or more members of which are not resident in the United Kingdom, means the members which are not resident in the United Kingdom;
 - (b) " group " and " subsidiary " shall be construed in accordance with subparagraphs (b) and (c) of paragraph 1 of Schedule 13 to the Finance Act 1965, with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom,
 - (c) except in the definition of " non-resident group " above, or as otherwise expressly provided, " company " shall be construed in accordance with subparagraph (a) of the said paragraph 1 (which relates to companies resident in the United Kingdom).
- (2) For the purposes of this Part of this Schedule a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a subsidiary of another company the group of which it was the principal company before that time shall be regarded as the same as the group of which that other company, or one of which it is a subsidiary, is the principal company, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.
 - (3) For the said purposes the passing of a resolution or the making of an order, or any other act, for the winding-up of a company shall not be regarded as the occasion of that company, or of any subsidiary of that company, ceasing to be a member of a group of companies.
 - (4) Without prejudice to the provisions of paragraph 2(1) of Schedule 13 to the Finance Act 1965, where any provision in this Part of this Schedule makes the assumption that a member of a group has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.
 - (5) Any provision in this Part of this Schedule making the assumption that an asset is sold and reacquired at market value shall have effect subject to the provisions of section 33 of the Finance Act 1967 (current use value of land in Great Britain).

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- (6) This Part of this Schedule has effect as respects tax for any accounting period ending after 10th April 1968, and so far as it relates to liability to tax arising on a disposal deemed to have been made on or before 10th April 1968, shall have effect for tax for earlier accounting periods.