



# Income and Corporation Taxes Act 1970 (repealed 6.4.1992)

## 1970 CHAPTER 10

### PART XI

#### COMPANY TAXATION

### CHAPTER I

#### MAIN PROVISIONS

**Modifications etc. (not altering text)**

- C1** See *Income and Corporation Taxes Act 1988* (c. 1, SIF 63:1), ss. **21(2)**, 59— Pt. XI Ch. 1 to have effect to the exclusion of those sections (persons chargeable under Schs. A and D).

*General system of taxation*

**238 Charge to corporation tax.**

- (1) ..... <sup>F1</sup>
- (4) In this Part of this Act, except in so far as the context otherwise requires—
- (a) “profits” means income and chargeable gains, and
  - (b) “trade” includes “vocation”, and includes also an office or employment [<sup>F2</sup>or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts].

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

#### Textual Amendments

- F1** Ss. 238(1)–(3) and 239–242 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 31](#).
- F2** Words repealed (6.4.1993) by [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), s. 148, [Sch. 14 Pt. V](#).

**239—** <sup>F3</sup> .....

**242.**

#### Textual Amendments

- F3** Ss. 238(1)–(3) and 239–242 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 31](#).

### Corporation tax

#### [<sup>F4</sup>243 General scheme of corporation tax.

- (1) Subject to any exceptions provided for by the Corporation Tax Acts, a company shall be chargeable to corporation tax on all its profits wherever arising.
- (2) A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the profits accrued to it directly; and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those profits.
- (3) Corporation tax for any financial year shall be charged on profits arising in that year; but [<sup>F5</sup>corporation tax shall be computed and chargeable (and any assessments shall accordingly be made)] by reference to accounting periods, and the amount chargeable (after making all proper deductions) of the profits arising in an accounting period shall, where necessary, be apportioned between the financial years in which the accounting period falls.
- (4) Except as provided by [<sup>F6</sup>section 244 below and] section 344 of this Act (special provisions for building societies), corporation tax [<sup>F7</sup>assessed] for an accounting period shall be [<sup>F5</sup>due and payable on the expiry of] nine months from the end of that period or, if it is later, within [<sup>F8</sup>thirty days from the date of the issue of the notice of assessment].
- (5) In any financial year assessments for accounting periods falling wholly or partly in that year or (subject to subsection (6) below) in the preceding year may, notwithstanding that corporation tax has not at the time been charged for the year in question, charge tax for so much of the period as falls within that year according to the rate of tax [<sup>F9</sup>and the other rates and the fractions] last fixed, but any such charge shall be subject to later adjustment, if need be, by discharge or repayment of tax or by a further assessment if for that year corporation tax is not charged by an Act passed not later than 5th August next after the end of the year or is charged otherwise than as it has been assessed.

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- (6) Where the House of Commons passes a Resolution for fixing the rate of corporation tax for any financial year, or for altering the tax for any financial year, then any assessment to tax afterwards made by virtue of subsection (5) above may be made in accordance with the Resolution; but no assessment made by virtue of that subsection later than 5th May next after the end of any financial year shall charge tax for that year, unless a Resolution for charging corporation tax for that year has been so passed, nor shall any assessment be made by virtue of any such Resolution later than the prescribed period from the date on which the Resolution is passed.
- (7) In subsection (6) above “the prescribed period” means—
- (a) as respects a Resolution passed in March or April in any year, a period beginning with the passing of the Resolution and ending with 5th August in the same calendar year,
  - (b) as respects any other Resolution, four months after the date on which the Resolution is passed.]

#### Textual Amendments

- F4** S. 243 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, **Sch. 31**. See Sch. 30 para. 1 (transitional provisions).
- F5** Words substituted by [Finance \(No. 2\) Act 1987 \(c. 51\)](#), s. 90(1) for accounting periods ending after a day to be appointed.
- F6** Words repealed by [Finance Act 1987 \(c. 16\)](#), s. 72(7), **Sch. 16 Pt. V** for accounting periods beginning on or after March 17th 1987.
- F7** Word omitted by [Finance \(No. 2\) Act 1987 \(c. 51\)](#), s. 90(1) for accounting periods ending after a day to be appointed.
- F8** Words substituted by [Finance \(No. 2\) Act 1975 \(c. 45\)](#), s. 44(2) where notices of assessment issued after July 31st 1975 and omitted by [Finance \(No. 2\) Act 1987 \(c. 51\)](#), s. 90(1) for accounting periods ending after a day to be appointed.
- F9** Words inserted by [Finance Act 1974 \(c. 30\)](#), s. 36.

#### Modifications etc. (not altering text)

- C2** For accounting periods ending after April 5th 1973 see also [Finance Act 1972 \(c. 41\)](#), ss. 84(5), 85— payment of advance corporation tax.
- C3** For accounting periods ending after April 5th 1973 see also [Finance Act 1972 \(c. 41\)](#), ss. 84(5), 85— Payment of advance corporation tax.
- C4** See [Finance \(No. 2\) Act 1975 \(c. 45\)](#), s. 48(9) as to application of this subsection to repayment of supplements; [Finance Act 1987 \(c. 16\)](#), s. 36(3)(a), **Sch. 6 Pt. I paras. 2** and 3 and [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 30 para. 1** for the effect of s. 243(4) in the transitional provisions relating to corporation tax payment dates; and [Finance \(No. 2\) Act 1987 \(c. 51\)](#), s. 95(4), **Sch. 6 para. 8**— Treasury may modify s. 243(4) by statutory instrument in its application to Lloyd's Underwriting Agency companies for accounting periods ending after a day to be appointed.
- C5** See [Finance Act 1972 \(c. 41\)](#), s. 103(1)— corresponding provisions for advance corporation tax.
- C6** See [Finance Act 1972 \(c. 41\)](#), s. 103(2)(3)— corresponding provisions for advance corporation tax and [Provisional Collection of Taxes Act 1968 \(c. 2\)](#), s. 5 (in Part II Vol. 5)— application of s. 243(6) between introductions of budget and passing of budget resolutions.

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**[<sup>F10</sup>244 Time for payment of corporation tax: companies trading before financial year 1965.**

(1) Where, in respect of a trade chargeable under Case I or II of Schedule D, a company was within the charge to income tax from a time before the financial year 1965, then (so long as the company continues to be within the charge to corporation tax in respect of that trade) section 243(4) above shall not apply to the company, but corporation tax assessed on the company (or on some person in its place) for any accounting period, whether or not in respect of the trade, shall be paid within the like interval from the end of the accounting period as there was between the end of the basis period of the trade for the year 1965-66 and 1st January 1966 or, if it is later, within [<sup>F11</sup>thirty days from the date of the issue of the notice of assessment.]

Provided that this subsection shall not apply unless the said interval is longer than nine months.

(2) Where subsection (1) above applies to a company having distinct trades which had different basis periods for the year 1965-66, that one of the basis periods which ended earliest shall be taken.

(3) References in this section to the basis period for the year 1965-66 are, in relation to any source of income, references to the period on the income of which the income tax (if any) chargeable for that year fell to be finally computed in respect of the source or, where by virtue of any provision of the Income Tax Acts the income of any other period was to be taken to be the income of the said period, that other period.]

**Textual Amendments**

**F10** S. 244 repealed by Finance Act 1987 (c. 16), ss. 36(1), 72(7), **Sch. 16 Pt. V** for accounting periods beginning on or after March 17th 1987, but see transitional provisions contained in s. 36(3)(a), Sch. 6 Pt. I of the Act of 1987 for certain accounting periods. (And see now [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 30 para. 1**).

**F11** Words substituted by Finance (No. 2) Act 1975 (c. 45), **s. 44(2)** where notices of assessment issued after July 31st 1975.

**Modifications etc. (not altering text)**

**C7** See [Taxes Management Act 1970 \(c. 9, SIF 63:1\)](#), **s. 88(5)**— date when tax ought to have been paid for the purpose of s. 88 (interest on tax recovered to make good loss due to taxpayer's fault).

**C8** See [Finance \(No. 2\) Act 1975 \(c. 45\)](#), **s. 48(9)** as to application of this subsection to repayment supplements.

**245—** <sup>F12</sup> .....  
**266.**

**Textual Amendments**

**F12** Ss. 245–266 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, **Sch. 31**.

**267 Company reconstruction or amalgamation: transfer of assets.**

(1) Subject to the provisions of this section, where—

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- (a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and
- (b) the transfer takes effect after 5th April 1970, and
- (c) at the time of the transfer both the companies are resident in the United Kingdom, and
- (d) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then so far as relates to corporation tax on chargeable gains the two companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of [F13Schedule 5 to the Capital Gains Tax Act 1979] (assets held on 6th April 1965) the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

- (2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

[F14(2A) This section does not apply in relation to an asset if the company acquiring it, though resident in the United Kingdom,—

- (a) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
- (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after the acquisition.]

- (3) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which [F13section 96 . . . F15 of the Capital Gains Tax Act 1979] (unit trusts for exempt unit holders) applies [F16or which is an authorised unit trust within the meaning of [F17section 468 of the Taxes Act 1988] or to an investment trust within the meaning of [F17section 842 of that act]].

[F18(3A) This section does not apply unless the reconstruction or amalgamation is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax; but the foregoing provisions of this subsection shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the acquiring company, notified the company that the Board are satisfied that the reconstruction or amalgamation\*. will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as aforesaid.

[F19Subsections (2) to (5) of section 88 of the Capital Gains Tax Act 1979] shall have effect in relation to this subsection as they have effect in relation to [F19subsection (1)] of that section.

- (3B) Where, if the company making the disposal had not been wound up, tax could have been assessed on it by virtue of subsection (3A) above, that tax may be assessed and

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charged (in the name of the company making the disposal) on the company to which the disposal is made.

(3C) If any tax assessed on a company (the chargeable company) by virtue of subsection (3A) or (3B) above is not paid within six months from the date when it is payable, any other person who—

- (a) holds all or any part of the assets in respect of which the tax is charged; and
- (b) either is the company to which the disposal was made or has acquired the assets without there having been any subsequent disposal not falling within this section or section 273 below,

may, 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, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this section shall be entitled to recover a sum of that amount from the chargeable company.]

(4) In this section—

“scheme of reconstruction or amalgamation” means a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,

“trading stock” has the meaning given by section [F20]100(2) of the Taxes Act 1988].

#### Textual Amendments

- F13** Words substituted by [Capital Gains Tax Act 1979](#) (c. 14, SIF 63:2), s. 157(2), [Sch. 7 para. 9](#) for 1979-80 et seq.
- F14** [S. 267\(2A\)](#) inserted by [Finance Act 1990](#) (c. 29), s. 65(1)(4) in relation to disposals on or after March 20th 1990.
- F15** Words repealed by [Finance Act 1980](#) (c. 48), ss. 81(2), 122(4), [Sch. 20 Pt. X](#) in relation to disposals after March 31st 1980.
- F16** Words inserted by [Finance Act 1980](#) (c. 48), s. 81(2) in relation to transfers after March 31st 1980.
- F17** Words substituted by [Income and Corporation Taxes Act 1988](#) (c. 1, SIF 63:1), [Sch. 29 para. 32](#).
- F18** [S. 267\(3A\)–\(3C\)](#) inserted by [Finance Act 1977](#) (c. 36), s. 41 as regards transfers which took effect after April 19th 1977.
- F19** Words substituted by [Capital Gains Tax Act 1979](#) (c. 14, SIF 63:2), s. 157(2), [Sch. 7 para. 9](#) for 1979-80 et seq.
- F20** Words substituted by [Income and Corporation Taxes Act 1988](#) (c. 1, SIF 63:1), [Sch. 29 para. 32](#).

#### Modifications etc. (not altering text)

- C9** [S. 267](#) excluded (16.1.1992) for certain purposes by S.I 1992/58, art. 9, Sch. 2 para. 1.
- C10** See [Finance Act 1982](#) (c. 39), s. 86, [Sch. 13 para. 3\(3\)](#) in relation to indexation allowances where initial disposal is within this section and [Finance Act 1983](#) (c. 28), s. 34, [Sch. 6 para. 9\(1\)](#) in relation to indexation allowance where election for pooling made and where disposal is within this section.
- C11** See [Income and Corporation Taxes Act 1970](#) (c. 10, SIF 63:1), s. 537, [Sch. 14 para. 11](#)— where transfer took effect before April 6th 1970; [Finance Act 1965](#) (c. 25), [Sch. 7 para. 7\(2\)](#) applies.
- C12** See [Finance \(No. 2\) Act 1987](#) (c. 51), s. 95(4), [Sch. 6 para. 2](#) for changes in respect of chargeable gains accruing in accounting periods ending after a day to be appointed.
- C13** See [Finance Act 1974](#) (c. 30), s. 39(5), [Sch. 5 para. 5](#)— where s. 267 applies to a disposal, consideration therefor to be disregarded for purposes of s. 39(4) of the said Act (development gains: small disposals) and [Finance Act 1988](#) (c. 39, SIF 63:1, 2), s. 96, [Sch. 8 para. 1](#)— capital gains tax rebasing to 1982.

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## [<sup>F21</sup>267A Insurance companies: transfers of business.

- (1) This section applies where there is a transfer of the whole or part of the long term business of an insurance company (“the transferor”) to another company (“the transferee”) in accordance with a scheme sanctioned by a court under section 49 of the <sup>M1</sup>Insurance Companies Act 1982.
- (2) Subject to subsection (3) below, where this section applies section 267 above shall not be prevented from having effect in relation to any asset included in the transfer by reason that—
- the transfer is no part of a scheme of reconstruction or amalgamation,
  - the condition in paragraph (c) of subsection (1) of that section is not satisfied, or
  - the asset is within subsection (2) of that section;
- and where section 267 above applies by virtue of paragraph (a) above the references in subsection (3A) of that section to the reconstruction or amalgamation shall be construed as references to the transfer.
- (3) Section 267 above shall not have effect in relation to an asset by virtue of subsection (2) above unless—
- any gain accruing to the transferor—
    - on the disposal of the asset in accordance with the scheme, or
    - where that disposal occurs after the transfer of business has taken place, on a disposal of the asset immediately before that transfer, and
  - any gain accruing to the transferee on a disposal of the asset immediately after its acquisition in accordance with the scheme,
- would be a chargeable gain which would form part of its profits for corporation tax purposes (and would not be a gain on which, under any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988, it would not be liable to tax).]

### Textual Amendments

**F21** S. 267A inserted by Finance Act 1990 (c. 29), s. 48, **Sch. 9 para. 1** in relation to transfers of business taking place on or after January 1st 1990.

### Marginal Citations

**M1** 1982 c. 50

## [<sup>F22</sup>268A Postponement of charge on transfer of assets to non-resident company.

- (1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a branch or agency and—
- that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) is transferred to a company not resident in the United Kingdom;
  - the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee company to the transferor company;

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- (c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company; and
  - (d) either no allowable losses accrue to the transferor company on the transfer or the aggregate of the chargeable gains so accruing exceeds the aggregate of the allowable losses so accruing.
- (2) In any case to which this section applies the transferor company may claim that [F23the Capital Gains Tax Act 1979] shall have effect in accordance with the following provisions.
- (3) Any allowable losses accruing to the transferor company on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses and—
- (a) if the securities are the whole consideration for the transfer, the whole of that gain shall be treated as not accruing to the transferor company on the transfer but an equivalent amount (“the deferred gain”) shall be brought into account in accordance with subsections (4) and (5) below;
  - (b) if the securities are not the whole of that consideration—
    - (i) paragraph (a) above shall apply to the appropriate proportion of that gain; and
    - (ii) the remainder shall be treated as accruing to the transferor company on the transfer. In paragraph (b)(i) above “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.
- (4) If at any time after the transfer the transferor company disposes of the whole or part of the securities held by it immediately before that time, the consideration received by it on the disposal shall be treated as increased by the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (5) below. In this subsection “the appropriate proportion” means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal.
- (5) If at any time within six years after the transfer the transferee company disposes of the whole or part of the relevant assets held by it immediately before that time there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (4) above. In this subsection “relevant assets” means assets the chargeable gains on which were taken into account in arriving at the deferred gain and “the appropriate proportion” means the proportion which the chargeable gain so taken into account in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.
- (6) There shall be disregarded—
- (a) for the purposes of subsection (4) above any disposal to which section 273 of this Act applies; and
  - (b) for the purposes of subsection (5) above any disposal to which that section would apply apart from section 272(1)(a) or (2) of this Act;



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and where a person acquires securities or an asset on a disposal disregarded for the purposes of subsection (4) or (5) above (and without there having been a previous disposal not so disregarded) a disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, transferee company.

- (7) This section applies where the transfer mentioned in subsection (1)(a) above is on or after 29th March 1977.
- (8) If in the case of any such transfer as was mentioned in subsection (1) of section 268 of this Act there were on the said 29th March chargeable gains which by virtue of subsection (2) of that section were treated as not yet having accrued to the transferor company, subsections (4) and (5) above shall (without any claim in that behalf) apply to the aggregate of those gains as if references to the deferred gain were references to that aggregate and as if references to the transfer and the securities were references to the transfer and the shares, or shares and loan stock, mentioned in subsection (1) of that section.]

#### Textual Amendments

**F22** S. 268A substituted for s. 268 by [Finance Act 1977 \(c. 36\)](#), [s. 42](#) on and after March 29th 1977.

**F23** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), [s. 157\(2\)](#), [Sch. 7 para. 8](#) for 1979-80 et seq.

#### Modifications etc. (not altering text)

**C14** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), [Sch. 9 para. 3](#) and [Finance Act 1989 \(c. 26\)](#), [s. 141](#), [Sch. 15 para. 1\(2\)](#)— deferred charges on gains before March 31st 1982.

**C15** S. 268A excluded (16.1.1992) for certain purposes by [S.I. 1992/58](#), [art. 9](#), [Sch. 2 para. 1](#).

**C16** See, as regards insurance companies, [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 442](#).

**C17** See [Finance Act 1989 \(c. 26\)](#), [s. 141](#), [Sch. 15 para. 1](#)— gains deferred before April 1st 1982 not brought into charge in relation to events occurring on or after April 6th 1982.

## 269 Interest charged to capital.

(1) Where—

(a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under [<sup>F24</sup>section 32 of the Capital Gains Tax Act 1979] in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and

(b) that expenditure was defrayed out of borrowed money, . . . <sup>F25</sup>

(c) . . . <sup>F25</sup>,

[<sup>F26</sup>the sums so allowable under the said section 32 shall, subject to subsection (1A) below, include the amount of any interest on that borrowed money which is referable to a period or part of a period ending on or before the disposal.

(1A) Subsection (1) above has effect subject to section 33 of the said Act of 1979 and does not apply to interest which is a charge on income.]

(2) . . . <sup>F27</sup>

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#### Textual Amendments

- F24** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 157(2), [Sch. 7 paras. 2](#) and 9 for 1979-80 et seq.
- F25** [S. 268A\(1\)\(c\)](#) and word immediately preceding it repealed by [Finance Act 1981 \(c. 35\)](#), ss. 38(3), 139, [Sch. 19 Pt. VI](#) in relation to interest paid in any accounting period ending on or after April 1st 1981.
- F26** Words substituted by [Finance Act 1981 \(c. 35\)](#), s. 38(3) in relation to interest paid in any accounting period ending on or after April 1st 1981.
- F27** [S. 269\(2\)](#) repealed, as respects disposals after July 22nd 1970, by [Finance Act 1971 \(c. 68\)](#), ss. 55, 69(7), [Sch. 14 Pt. III](#), subject to s. 55 and Sch. 9 of the said Act of 1971.

*[<sup>F28</sup> Transfers concerning companies of different member States]*

#### Textual Amendments

- F28** [Ss. 269A-269D](#) inserted(*retrosp.*) in relation to transfers taking effect on or after 1.1.1992 by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), ss.47,48.

#### <sup>F29</sup>269A Transfer of a UK trade.

- (1) This section applies where—
- (a) a qualifying company resident in one member State (company A)
 

transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),
  - (b) the transfer is wholly in exchange for securities issued by company B to company A,
  - (c) a claim is made under this section by company A and company B,
  - (d) section 269B below does not prevent this section applying, and
  - (e) the appropriate condition is met in relation to company B immediately after the time of the transfer.
- (2) Where immediately after the time of the transfer company B is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988.
- (3) Where immediately after the time of the transfer company B is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.
- (4) Where this section applies—
- (a) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A for a consideration of such amount as would

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- secure that on the disposal by way of transfer neither a gain nor a loss would accrue to company A;
- (b) section 127(3) of the Finance Act 1989 (deemed disposal at market value) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).
- (5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (7) In this section—
- “qualifying company” means a body incorporated under the law of a member State;
- “securities” includes shares.

#### Textual Amendments

**F29** Ss. 269A, 269B inserted(*retrosp.*) in relation to transfers taking effect on or after 1.1.1992 by Finance (No. 2) Act 1992 (c. 48), s.47.

#### <sup>F30</sup>269B Section 269A: anti-avoidance.

- (1) Section 269A above shall not apply unless the transfer of the trade or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A and company B notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 88 of the Capital Gains Tax Act 1979 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.

#### Textual Amendments

**F30** Ss. 269A, 269B inserted(*retrosp.*) in relation to transfers taking effect on or after 1.1.1992 by Finance (No. 2) Act 1992, s.47.

#### <sup>F31</sup>269C Transfer of a non-UK trade.

- (1) This section applies where—
- (a) a qualifying company resident in the United Kingdom (company A)

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*Status: Point in time view as at 15/11/1991.*

**Changes to legislation:** *There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

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- transfers to a qualifying company resident in another member State (company B) the whole or part of a trade which, immediately before the time of the transfer, company A carried on in a member State other than the United Kingdom through a branch or agency,
- (b) the transfer includes the whole of the assets of company A used for the purposes of the trade or part (or the whole of those assets other than cash),
  - (c) the transfer is wholly or partly in exchange for securities issued by company B to company A,
  - (d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of the allowable losses so accruing,
  - (e) a claim is made under this section by company A, and
  - (f) section 269D below does not prevent this section applying.
- (2) The Capital Gains Tax Act 1979 shall have effect in accordance with subsection (3) below.
- (3) The allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.
- (4) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 268A above.
- (5) In a case where this section applies, section 815A of the Taxes Act 1988 shall also apply.
- (6) For the purposes of subsection (1)(a) above—
- (a) a company shall not be regarded as resident in the United Kingdom if it falls to be regarded for the purposes of any double taxation relief arrangements to which the United Kingdom is a party as resident in a territory which is not within any of the member States;
  - (b) a company shall be regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (7) For the purposes of subsection (6)(b) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (8) Section 442(3) of the Taxes Act 1988 (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to company A on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.
- (9) In this section—
- “qualifying company” means a body incorporated under the law of a member State;
  - “securities” includes shares.]

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

**Textual Amendments**

**F31** Ss. 269C, 269D inserted(*retrosp.*) in relation to transfers taking effect on or after 1.1.1992 by Finance (No. 2) Act (c. 48), s.48.

**<sup>F32</sup>269D Section 269C: anti-avoidance.**

- (1) Section 269C above shall not apply unless the transfer of the trade or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A notified that company that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 88 of the Capital Gains Tax Act 1979 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.

**Textual Amendments**

**F32** Ss. 269C, 269D inserted(*retrosp.*) in relation to transfers taking effect on or after 1.1.1992 by Finance (No. 2) Act 1992 (c. 48), s.48.

*Gilt-edged securities: restrictions on exemptions*

**270 Charge to tax on certain disposals of United Kingdom securities.**

(1) ..... <sup>F33</sup>

[<sup>F34</sup>(3) Where under section 273 below the companies disposing of and acquiring an asset are to be treated as if the consideration were of such an amount that neither a gain nor a loss accrues on the [<sup>F35</sup>disposal, and the asset consists of specified securities [<sup>F36</sup>or qualifying corporate bonds as defined in section 64 of the Finance Act 1984] the company acquiring the asset shall be treated for the purposes of sections 67 to 70 of the Capital Gains Tax Act 1979 as acquiring it at the time when the other acquired it.]]

(4) In any case where—

- (a) at 3.30 p.m. on 15th April 1969 (in the following provisions of this section referred to as “the relevant time”) or at any time thereafter (whether before or after the commencement of this Act) any specified securities were held by a company in such circumstances that any gain or loss on their disposal would, apart from [<sup>F35</sup>section 67 of the Capital gains Tax Act 1979]( . . . <sup>F37</sup>), have been taken into account in determining the company’s liability to corporation tax on chargeable gains, and
- (b) those securities are subsequently appropriated by the company in such circumstances that if they were disposed of after the appropriation, any profit accruing on their disposal would be brought into account in computing the company’s income for corporation tax,

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*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

then for the purposes of corporation tax any loss incurred by the company on the disposal of those securities shall not exceed the loss which would have been incurred on that disposal if the amount or value of the consideration for the acquisition of the securities had been equal to their market value at the time of the appropriation.

(5) In any case where—

- (a) at the relevant time or at any time thereafter (whether before or after the commencement of this Act) any specified securities were held by a company in such circumstances that any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax, and
- (b) those securities are subsequently appropriated by the company in such circumstances that any gain accruing on their disposal would, by virtue of <sup>F38</sup>section 67 of the Capital Gains Tax Act 1979], be exempt from corporation tax on chargeable gains,

then for the purposes of corporation tax the company shall be treated as if, immediately before the appropriation, it had sold and repurchased the specified securities at their market value at the time of the appropriation.

<sup>F39</sup>(6) In this section “specified securities” means securities which are gilt-edged securities as defined by Schedule 2 to the Capital Gains Tax Act 1979 <sup>F38</sup>or qualifying corporate bonds, within the meaning of section 64 of the Finance Act 1984.]

#### Textual Amendments

- F33** S. 270(1)(2) repealed, as regards disposals after April 19th 1971, by Finance Act 1971 (c. 68), ss. 56, 69(7), Sch. 14 Pt. IV.
- F34** S. 270(3) repealed by Finance Act 1985 (c. 54), s. 98(6), Sch. 27 Pt. VII with respect to disposals on or after July 2nd 1986.
- F35** Words substituted by Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s. 157(2), Sch. 7 paras. 2 and 9 for 1979-80 et seq.
- F36** Words inserted by Finance Act 1984 (c. 43), s. 64(1), Sch. 13 para. 4.
- F37** Words repealed by Finance Act 1977 (c. 36), s. 59, Sch. 9 Pt. VI.
- F38** Words substituted by Finance Act 1985 (c. 54), s. 67(2) with respect to disposals occurring on or after July 2nd 1986.
- F39** S. 270(6) inserted by Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s. 157(2), Sch. 7 para. 2 for 1979-80 et seq.

#### Modifications etc. (not altering text)

- C18** See Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 484(2)— restriction not to apply to certain trustee savings banks.

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<sup>F40</sup> .....

#### Textual Amendments

- F40** S. 271 subsections (1)–(3) repealed, as regards disposals after April 19th 1971 by Finance Act 1971 (c. 68), ss. 56, 69(7), Sch. 14 Pt. IV and subsection (4) repealed by Finance Act 1977 (c. 36), s. 59, Sch. 9 Pt. VI.

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*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

## Groups of companies

### Modifications etc. (not altering text)

- C19** See [Development Land Tax Act 1976 \(c. 24\), s. 47\(2\)](#)— s. 272 (with omission of subss. (1)(a) and (2)) and the following sections of Chapter II to have effect in relation to the Development of Land Tax Act 1976. The said Act of 1976 repealed by [Finance Act 1985 \(c. 54\), ss. 93, 98\(6\)](#), **Sch. 27 Pt. X** with effect from March 19th 1985.
- C20** See Finance Act 1984— for the purposes of ss. 272–281 a trustee savings bank, as defined in s. 54(1) of the [Trustee Savings Banks Act 1981 \(c. 65\)](#), shall be deemed to be a body corporate with effect from November 21st 1982.

## 272 Groups of companies: definitions.

- (1) [<sup>F41</sup>Except as otherwise provided, for] the purposes of this and the following sections of this Chapter—
- (a) references to a company, [<sup>F42</sup>subject to section 280(7) below], apply only to a company, as that expression is limited by subsection (2) below, which is resident in the United Kingdom;
  - [<sup>F43</sup>(b) subsections (1A) and (1D) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;]
  - (d) in applying the definition of “75 per cent. subsidiary” in section [<sup>F44</sup>838 of the Taxes Act 1988] any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and
  - (e) “group” and “subsidiary” shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.

[<sup>F45</sup>(1A) Subject to subsections (1B) to (1D) below—

- (a) a company (referred to below in this Chapter as the “principal company of the group”) and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but
  - (b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.
- (1B) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.
- (1C) Where a company (“the subsidiary”) is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (1A)(b) above, the subsidiary may, where the requirements of subsection (1A) above are satisfied, itself be the principal company of another group notwithstanding subsection (1B) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.
- (1D) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of two or more groups (the principal company of each group being referred to below as the “head of a group”), it is a



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member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—

- (a) it is a member of the group it would be a member of if, in applying subsection (1A)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,
  - (b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,
  - (c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,
  - (d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act 1988).
- (1E) For the purposes referred to in subsection (1) above, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—
- (a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and
  - (b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.
- (1F) Schedule 18 to the Taxes Act 1988 (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (1D) and (1E) above as if the references to subsection (7), or subsections (7) to (9), of section 413 of that Act were references to subsections (1D) and (1E) above and as if, in paragraph 1(4), the words from "but" to the end [<sup>F46</sup>paragraphs 5(3) and 7(1)(b) were omitted].
- (2) For the purposes referred to in subsection (1) above references to a company apply only to—
- (a) a company within the meaning of the [<sup>F47</sup>Companies Act 1985] or the corresponding enactment in Northern Ireland, and
  - (b) a company which is constituted under any other Act or a Royal Charter or letters patent or (although resident in the United Kingdom) is formed under the law of a country or territory outside the United Kingdom, and
  - (c) a registered industrial and provident society within the meaning of section [<sup>F48</sup>486 of the Taxes Act 1988][<sup>F49</sup>]; and
  - (d) a trustee savings bank as defined in section 54(1) of the Trustee Savings Banks Act 1981; [<sup>F50</sup>and
  - (e) a building society within the meaning of the Building Societies Act 1986].
- (3) For the purposes referred to in subsection (1) above a group remains the same group so long as the same company remains the principal company of the group, and if at



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any time the principal company of a group becomes a [<sup>F51</sup>member of another group, the first group and the other group shall be regarded as the same], and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

- (4) For the purposes referred to in subsection (1) above the passing of a resolution or the making of an order, or any other act, for the winding-up of [<sup>F52</sup>a member of a group of companies] shall not be regarded as the occasion of [<sup>F52</sup>that or any other company ceasing to be a member of the group.]
- (5) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the <sup>M2</sup>Transport Act 1962 and the new authorities within the meaning of the <sup>M3</sup>Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any two or more such bodies charged at different times with the same or related functions were members of a group:

Provided that this subsection shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter [<sup>F48</sup>VI of Part XII of the Taxes Act 1988].

- (6) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to [<sup>F53</sup>the London Transport Executive and] the Executive for a designate area within the meaning of section 9(1) of the <sup>M4</sup>Transport Act 1968 as if [<sup>F54</sup>that Executive] were a company within the meaning of those sections.

#### Textual Amendments

- F41** Words substituted by Finance Act 1990 (c. 29), s. 70(2)(a) in relation to disposals on or after March 20th 1990.
- F42** Words repealed by Finance Act 1990 (c. 29), s. 70(2)(b), Sch. 19 Pt. IV in relation to disposals on or after March 20th 1990.
- F43** S. 272(1)(b) substituted for s. 272(1)(b)(c) by Finance Act 1989 (c. 26), s. 138 on and after March 14th 1989 subject to s. 138(10)(11).
- F44** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 para. 32.
- F45** S. 272(1A)–(1F) inserted by Finance Act 1989 (c. 26), s. 138(2) on and after March 14th 1989 subject to s. 138(10)(11).
- F46** Words substituted by Finance Act 1990 (c. 29), s. 86(1). Principal company of a group can under certain circumstances elect for subs. (1F) not to apply when membership of a group is considered.
- F47** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), s. 30, Sch. 2 with effect from July 1st 1985.
- F48** Words substituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29 para. 32.
- F49** S. 272(2)(d) and word “and” immediately preceding it inserted by Finance Act 1984 (c. 43), s. 44(2)—deemed to have come into force on November 21st 1982.
- F50** S. 272(e) and word “and” immediately preceding it inserted by Finance (No. 2) Act 1987 (c. 51), s. 79.
- F51** Words substituted by Finance Act 1989 (c. 26), s. 138(3). Changes apply from March 14th 1989 subject to s. 138(10)(11).

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

- F52** Words substituted by Finance Act 1989 (c. 26), s. 138(4). Changes apply on and after March 14th 1989 subject to s. 138(10)(11).
- F53** Words inserted by Finance Act 1970 (c. 24, SIF 63:1, 2), s. 16(4), Sch. 3 para. 8(2) and repealed by London Regional Transport Act 1984 (c. 32), s. 71(3), Sch. 6 para. 7 and Sch. 7 on and after June 29th 1984 by S.I. 1984 No. 877.
- F54** Words substituted by London Regional Transport Act 1984 (c. 32), s. 71(3)(a), Sch. 6 para. 7 on and after June 29th 1984 by S.I. 1984 No. 877.

#### Modifications etc. (not altering text)

- C21** See Finance Act 1974 (c. 30), s. 41(10), s. 272 applied for purposes of s. 41(8)(9) (development gains: indirect disposals); s. 45(4), Sch. 9 para. 11(3) of the Act of 1974— s. 272 applied for purposes of para. 11 (first letting after material development: groups of companies) and Finance (No. 2) Act 1975 (c. 45), s. 58(10) for application of definition of “group” for purposes of s. 58 (disposal of shares and securities within prescribed period of acquisition after April 14th 1975).
- C22** See Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s.70(7), for application of definition of “group” for purposes of s. 70 (losses on disposals of gilt-edged securities replaced within prescribed period); Finance Act 1982 (c. 39), s. 89(6), s. 272 applied for purposes of s. 89 (rules for identification of securities) and Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 347(5)— applied for purposes of s. 347 (groups).
- C23** See Finance Act 1988 (c. 39, SIF 63:1, 2), s. 132, for application of definition of “group” applied in a modified form for purposes of s. 132 (unpaid tax); Sch. 12 para. 4 of the Act of 1988 for application of definition of “group” for purposes of Sch. 12 (building societies); Finance Act 1989 (c. 26), s. 134 for application of definition of “group” to non-payment of tax by non-residents and Finance Act 1990 (c. 29), s. 32(10)— for application of definition of “group” for purposes of ss. 31 and 32 (employee share ownership trusts).
- C24** Ss. 272-281: definition of “effective 51 percent. subsidiary” applied (E.W.S.) by Ports Act 1991 (c. 52, SIF 58), s. 17(13)
- C25** See Finance Act 1973 (c. 51), s. 38(5), s. 272(1)(a) and (2) not applicable for purposes of ss. 273 to 275 and 278 to 279 in relation to certain disposals of offshore exploration or exploitation rights.
- C26** See Income and Corporation Taxes Act 1970 (c. 10, SIF 63:1), s. 268A(6), postponement of charge on transfer of assets to non-resident company.
- C27** See Finance (No. 2) Act 1975 (c. 45), s. 54, Sch. 10 para. 16(3), definition of “group” applied in relation to relief for increase in value of trading stock and work in progress in base periods mentioned in Sch. 10 para. 2. See also Finance Act 1976 (c. 40), Sch. 5 para. 29(3) regarding application of definition of group.
- C28** See Capital Gains Tax Act 1979 (c. 14, SIF 63:2), ss. 26–26C— application of definition in relation to value shifting provisions.
- C29** S. 54(1) of the Trustee Savings Banks Act 1981 (c. 65) defines a trustee savings bank as “a bank certified under this Act, the Trustee Savings Banks Act 1969, the Trustee Savings Banks Act 1954 or the Trustee Savings Banks Act 1863”.
- C30** See Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 513(3)— successor companies to British Airways Board and National Freight Corporation not to be regarded as within s. 272(5) by reason only of the provisions of s. 513 and Gas Act 1986 (c. 44), s. 60(2) s. 272(5) not to apply to successor companies to the British Gas Corporation by virtue of s. 60(1) of that Act.

#### Marginal Citations

- M2** 1962 c. 46.
- M3** 1968 c. 73.
- M4** 1968 c. 73.

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

## 273 Transfers within a group.

- (1) Notwithstanding any provision in [<sup>F55</sup>the Capital Gains Tax Act 1979] fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be treated, so far as relates to corporation tax on chargeable gains, as if the asset required by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies 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.
- (2) Subsection (1) above shall not apply where the disposal is—
- (a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or
  - (b) a disposal of redeemable shares in a company on the occasion of their redemption; [<sup>F56</sup>or
  - (c) a disposal by or to an investment trust within the meaning of [<sup>F57</sup>section 842 of the Taxes Act 1988]; [<sup>F58</sup>or
  - (d) a disposal to a dual resident investing company, within the meaning of section [<sup>F57</sup>404 of the Taxes Act 1988]] [<sup>F59</sup>or
  - (e) a disposal to a company which, though resident in the United Kingdom,—
    - (i) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
    - (ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.]

and the reference in that subsection to a member of a group of companies disposing of an asset shall not apply to anything which under [<sup>F60</sup>section 72 of the Capital Gains Tax Act 1979] is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in [<sup>F60</sup>that section]) from that company, whether or not involving a reduction of capital.

[<sup>F61</sup>(2A) Subsection (1) above shall not apply to a transaction treated by virtue of sections 78 and 85 of the Capital Gains Tax Act 1979 as not involving a disposal by the company first mentioned in that subsection.]

- (3) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

### Textual Amendments

**F55** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 157(2), [Sch. 7 para. 8](#) for 1979-80 et seq.

**F56** [S. 273\(2\)\(c\)](#) and word "or" immediately preceding it inserted by [Finance Act 1980 \(c. 48\)](#), s. 81(4) in relation to disposals after March 31st 1980.

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

- F57** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 para. 32**.
- F58** [S. 273\(2\)\(d\)](#) and word “or” immediately preceding it inserted by [Finance \(No. 2\) Act 1987 \(c. 51\)](#), **s. 64(3)** in relation to disposals on or after April 1st 1987.
- F59** [S. 273\(2\)\(e\)](#) and word “or” immediately preceding it inserted by [Finance Act 1990 \(c. 29\)](#), **s. 65(2)(4)** in relation to disposals on or after March 20th 1990.
- F60** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), **s. 157(2)**, **Sch. 7 para. 9** for 1979-80 et seq.
- F61** [S. 273\(2A\)](#) inserted by [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **s. 115** on or after March 15th 1988.

#### Modifications etc. (not altering text)

- C31** See [Income and Corporation Taxes Act 1970 \(c. 10, SIF 63:1\)](#), **s. 268A(6)** postponement of charge on transfer of assets to non-resident company; [Finance Act 1970 \(c. 24, SIF 63:1, 2\)](#), **s. 16(4)**, **Sch. 3 para. 8(1)** assets transferred from the London Transport Board to the London Transport Executive or [London Country Bus Services Ltd and Finance Act 1973 \(c. 51\)](#), **s. 38(5)** application of ss. 273 to 275 and 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation rights.
- C32** See [Finance Act 1974 \(c. 30\)](#), **s. 39(5)**, **Sch. 5 para. 5**, where [s. 273](#) applies to a disposal consideration therefor to be disregarded for purposes of [s. 39](#) of the 1974 Act (development gains; small disposals); [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), **s. 16**, ss. 273 to 275 and 276(1) to apply in relation to non-resident companies which are members of a non-resident group and [s. 26](#) of the Act of 1974 disposals within this section excluded from [s. 43](#) valuers' schemes.
- C33** See [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), **s. 28**, **Sch. 5 para. 4(3)** election under para. 4 (quoted securities held on April 6th 1965) not to cover quoted securities to which [s. 273](#) applies unless company making original disposal makes election covering securities of that kind; [s. 75\(4\)](#) of the Act of 1979 [s. 75](#) (transfers at under-value) not to apply where transfer is a disposal within [s. 273](#) and [s. 35\(5\)](#) of the Act of 1979 apportionment of deductible expenditure on apt disposal declared to operate before and without regard to [s. 273](#) and [s. 84](#) of the Act of 1979 treatment of gilt-edged securities exchanged for shares compulsorily acquired after April 6th 1976.
- C34** See [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), **s. 87(4)**, recovery of tax assessed to withdraw roll-over relief; [s. 107](#) of the Act of 1979 part disposals of land and [Finance Act 1982 \(c. 39\)](#), **s. 86**, **Sch. 13 para. 3(3)**, calculation of indexation allowance where initial allowance is within this section.
- C35** See [Finance Act 1983 \(c. 28\)](#), **s. 34**, **Sch. 6 para. 9(1)**, calculation of indexation allowance where election for pooling made and where disposal is within this section and [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **Sch. 11 para. 5**, indexation: groups and associated companies.
- C36** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), **Sch. 8 paras. 1, 2** of the capital gains tax rebasing to 1982 and [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **s. 440(3)**— ss. 273, 274 not to apply to disposals or acquisitions of life assurance companies.
- C37** [Ss. 272-281](#): definition of “effective 51 percent. subsidiary” applied (E.W.S.) by [Ports Act 1991 \(c. 52, SIF 58\)](#), **s. 17(13)**
- C38** [S. 273](#) applied (with modifications) (16.1.1992) for certain purposes by S.I 1992/58, art.33.

#### [<sup>F62</sup>273A] Transfer of United Kingdom branch or agency.

- (1) Subject to subsections (3) and (4) below, subsection (2) below applies for the purposes of corporation tax on chargeable gains where—
- (a) there is a scheme for the transfer by a company (“company A”)—
- (i) which is not resident in the United Kingdom, but
- (ii) which carries on a trade in the United Kingdom through a branch or agency,
- of the whole or part of the trade to a company resident in the United Kingdom (“company B”),

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- (b) company A disposes of an asset to company B in accordance with the scheme at a time when the two companies are members of the same group, and
  - (c) a claim in relation to the asset is made by the two companies within two years after the end of the accounting period of company B during which the disposal is made.
- (2) Where this subsection applies—
- (a) company A and company B shall be treated as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal, and
  - (b) section 127(3) of the Finance Act 1989 shall not apply to the asset by reason of the transfer.
- (3) Subsection (2) above does not apply where—
- (a) company B, though resident in the United Kingdom,—
    - (i) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
    - (ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition, or
  - (b) company B is—
    - (i) a dual resident investing company, within the meaning of section 404 of the Taxes Act 1988, or
    - (ii) an investment trust, within the meaning of section 842 of that Act.
- (4) Subsection (2) above shall not apply unless any gain accruing to company A—
- (a) on the disposal of the asset in accordance with the scheme, or
  - (b) where that disposal occurs after the transfer has taken place, on a disposal of the asset immediately before the transfer,
- would be a chargeable gain and would, by virtue of section 11(2)(b) of the Taxes Act 1988, form part of its profits for corporation tax purposes.
- (5) In this section “company” and “group” have the meanings which would be given by section 272 above if subsections (1)(a) and (2) of that section were omitted.]

#### Textual Amendments

**F62** S. 273A inserted by Finance Act 1990 (c. 29), s. 70(1) in relation to disposals on or after March 20th 1990.

#### Modifications etc. (not altering text)

**C39** Ss. 272-281: definition of “effective 51 percent. subsidiary” applied (E.W.S.) by Ports Act 1991 (c. 52, SIF 58), s. 17(13)

**C40** S. 273A applied (with modifications) (16.1.1992) for certain purposes by S.I. 1992/58, art.33.

## 274 Transfers within a group: trading stock.

- (1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for



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purposes of [F63section 122 of the Capital Gains Tax Act 1979] as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

- (2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of [F63section 122 of the Capital Gains Tax Act 1979] as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

#### Textual Amendments

**F63** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 157(2), [Sch. 7 para. 9](#) for 1979-80 et seq.

#### Modifications etc. (not altering text)

- C41** See [Finance Act 1973 \(c. 51\)](#), s. 38(5), application of ss. 273 to 275 and 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation rights; [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 16, ss. 273 to 275 and 276(1) to apply in relation to non-resident companies which are members of a non-resident group and [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 440(3), ss. 273, 274 not to apply to disposals or acquisitions of life assurance companies.
- C42** Ss. 272-281: definition of "effective 51 percent. subsidiary" applied (E.W.S.) by [Ports Act 1991 \(c. 52, SIF 58\)](#), s. 17(13)
- C43** S. 274(2) excluded (16.1.1993) for certain purposes by [S.I. 1992/58](#), art. 11(3).

## 275 Disposal or acquisition outside a group.

[F64(1) Where there is a disposal of an asset acquired in relevant circumstances, section 34 of the Capital Gains Tax Act 1979 (restriction of losses by reference to capital allowances) shall apply in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in relevant circumstances.

(1A) In subsection (1) above “relevant circumstances” means circumstances in which section 273 or 273A above applied or in which section 273 above would have applied but for subsection (2) of that section.

(1B) Subsection (1) above shall not be taken as affecting the consideration for which an asset is deemed under section 273 or 273A to be acquired.]

- (2) [F65Schedule 5 to the Capital Gains Tax Act 1979] (assets acquired before 6th April 1965) shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

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[<sup>F66</sup>(3) Subsection (2) above does not apply where the asset was acquired on a disposal within section 273(2)(c) above.]

#### Textual Amendments

- F64** S. 275(1)–(1B) substituted for s. 275(1) by Finance Act 1990 (c. 29), s. 70(3) in relation to disposals on or after March 29th 1990.
- F65** Words substituted by Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s. 157(2), Sch. 7 para. 9 for 1979-80 et seq.
- F66** S. 275(3) inserted by Finance Act 1980 (c. 448), s. 81(5) in relation to disposals after March 31st 1980.

#### Modifications etc. (not altering text)

- C44** See Finance Act 1973 (c. 51), s. 38(5) and the application of ss. 273 to 275 and 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation rights; Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s. 16— ss. 273 to 275 and 276(1) to apply in relation to non-resident companies which are members of a non-resident group and Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 440(3), ss. 273, 274 not to apply to disposals or acquisitions of life assurance companies.
- C45** Ss. 272-281: definition of "effective 51 percent. subsidiary" applied (E.W.S.) by Ports Act 1991 (c. 52, SIF 58), s. 17(13)

## 276 Replacement of business assets by members of a group.

- (1) [<sup>F67</sup>Subject to subsection (1A) below] for the purposes of [<sup>F68</sup>sections 115 to 121 of the Capital Gains Tax Act 1979] (replacement of business assets) all the trades carried on by members of a group of companies shall be treated as a single trade (unless it is a case of one member of the group acquiring, or acquiring the interest in, the new assets from another or disposing of, or of the interest in, the old assets to another).

[<sup>F69</sup>(1A) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company [<sup>F70</sup>or a company which, though resident in the United Kingdom,—

- (a) is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
- (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of, or of the interest in, the new assets occurring immediately after the acquisition;

and in the subsection “the old assets” and “the new assets” have the same meanings as in section 115 of the Capital Gains Tax Act 1979, and “dual resident investing company” has the same meaning as in section 404 of the Taxes Act 1988]].

- (2) [<sup>F68</sup>Section 117(2) of the Capital Gains Tax Act 1979] (special rules for depreciating assets) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in the said [<sup>F68</sup>section 117(2)].

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### Textual Amendments

- F67** Words inserted by [Finance \(No. 2\) Act 1987 \(c. 51\), s. 64\(4\)](#) where new assets are acquired on or after April 1st 1987.
- F68** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\), s. 157\(2\), Sch. 7 para. 9](#) for 1979-80 et seq.
- F69** [S. 276\(1A\)](#) inserted by [Finance \(No. 2\) Act 1987 \(c. 51\), s. 64\(4\)](#) where new assets are acquired on or after April 1st 1987.
- F70** Words substituted by [Finance Act 1990 \(c. 29\), s. 65\(3\)\(5\)\(6\)](#) in relation to the disposal of, or of the interest in, the old assets or the acquisition of, or of the interest in, the new assets on or after March 20th 1990. Change not to apply where acquisition takes place before March 20th 1990 and disposal within 12 months beginning with date of acquisition or such longer period as the Board may allow.

### Modifications etc. (not altering text)

- C46** See [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\), s. 16, ss. 273 to 275](#) and 276(1) to apply in relation to non-resident companies which are members of a non-resident group and [Finance Act 1984 \(c. 43\), s. 80\(4\)](#) of the Oil Taxation Acts and the modifications of the operation of s. 276 in connection with the replacement of business assets used in connection with oil fields.
- C47** [Ss. 272-281](#): definition of "effective 51 percent. subsidiary" applied (E.W.S.) by [Ports Act 1991 \(c. 52, SIF 58\), s. 17\(13\)](#)

**277** <sup>F71</sup> .....

### Textual Amendments

- F71** [S. 277](#) repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 844, Sch. 31](#).

## **278 Company ceasing to be member of a group.**

- (1) If a company (in this section called the chargeable company) ceases to be a member of a group of companies, this section 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;
- and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group [<sup>F72</sup>in consequence of another member of the group ceasing to exist]
- (2) Where two or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.
- (3) 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



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(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 [<sup>F73</sup>the Capital Gains Tax Act 1979] as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(3A)

[<sup>F74</sup>(3B) Where, apart from subsection (3C) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (3C) to (3E) below shall apply.

(3C) The company in question shall not be treated as selling the asset at that time; but if—

- (a) within six years of that time the company in question ceases at any time (“the relevant time”) to satisfy the following conditions, and
- (b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of the Capital Gains Tax Act 1979 as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(3D) Those conditions are—

- (a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (3B) above, and
- (b) that the company is an effective 51 per cent subsidiary of one or more of those members.

(3E)

(3F) Where—

- (a) by virtue of this section a company is treated as having sold an asset at any time, and
- (b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 26 of that Act, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (3C) above shall have effect as if the market value at that time had been that amount greater.]

(4) For the purposes of this section—

- (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 [<sup>F75</sup>sections 115 to 121 of the Capital Gains Tax Act 1979], 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,

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- (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 an 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.
- (5) If any of the corporation tax assessed on a company in consequence of this section 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 that tax; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.
- [<sup>F76</sup>(5A) The date referred to in subsection (5) above is whichever is the later of—
- (a) the date when the tax becomes due and payable by the company; and
  - (b) the date when the assessment was made on the chargeable company.]
- (6) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section 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 section 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 section shall be carried out.
- (7) The provision in subsection (3) above making the assumption that an asset is sold and re-acquired at market value shall, in accordance with paragraph 7(1) of Schedule 14 to the <sup>M5</sup>Finance Act 1967, have effect subject to the provisions of section 33 of that Act (current use value of land in Great Britain).
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the chargeable company ceases to be a member of the group in an accounting period ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

#### Textual Amendments

- F72** Words in s. 278(1) substituted (*retrosp.*) by Finance (No. 2) Act 1992 (c. 48), s. 25(2), and the substitution shall have effect, and be deemed to have had effect, in relation to a company which ceases to be a member of a group of companies on or after 15.11.1991.
- F73** Words substituted by Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s. 157(2), Sch. 7 para. 8 for 1979-80 et seq.
- F74** S. 278(3B)–(3F) inserted by Finance Act 1989 (c. 26), s. 138(5) from March 14th 1989 subject to s. 138(10)(11).
- F75** Words substituted by Capital Gains Tax Act 1979 (c. 14, SIF 63:2), s. 157(2), Sch. 7 para. 9 for 1979-80 et seq.

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- F76** S. 278(5A): see Finance (No. 2) Act 1987 (c. 51), s. 95(4), **Sch. 6 para. 4** for changes where the accounting period in which the Chargeable company ceases to be a member of the group ends after a day to be appointed.

#### **Modifications etc. (not altering text)**

- C48** See Finance Act 1973 (c. 51), **s. 38(5)**, application of ss. 273 to 275 and 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation rights.
- C49** See Finance Act 1973 (c. 51), **s. 38(5)**— application of ss. 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation rights; **Capital Gains Tax Act 1979** (c. 14, SIF 63:2), **s. 16**, ss. 278 and 279 to apply to non-resident group of companies and **Finance Act 1980** (c. 48), s. 117, **Sch. 18 paras. 10, 15**— application of ss. 278, 279 to exempt distributions and chargeable payments.
- C50** See Finance Act 1982 (c. 39), **s. 146** non-application of s. 278 as respects severance of a subsidiary company from British National Oil Corporation group on or after April 6th 1982. S. 146 was repealed by the **Oil and Pipelines Act 1985** (c. 62), s. 7(4), **Sch. 4 Pt. I** from December 1st 1985; **Finance Act 1982** (c. 39), **s. 147**, non-application of s. 278 as respects severance of a subsidiary company from British Gas Corporation. S. 147 is being repealed by the **Gas Act 1986** (c. 44), **Sch. 9 Pt. II** on and after August 24th 1986— commencement order S.I. 1986 No. 1318, and **Finance Act 1988** (c. 39, SIF 63:1, 2), **Sch. 12 para. 4**— change of status of building societies.
- C51** See **Trustee Savings Banks Act 1985** (c. 58), s. 5, **Sch. 2 para. 4(2)**, application of s. 278 where a 75 per cent. subsidiary of an existing bank becomes a 75 per cent subsidiary of the bank's successor under the **Trustee Savings Banks Act 1985**; **Transport Act 1985** (c. 67), **s. 130(4)**, non-application of s. 278 to the assets of a company on its ceasing to be a 75 per cent. subsidiary (within the meaning of the **Transport Act**) of the Executive where the company was owned by a Passenger Transport Executive under the **Transport Act 1985**, s. 59 and its shares or securities were subsequently transferred to a **Passenger Transport Authority**, and **Electricity Act 1989** (c. 29), s. 90, **Sch. 11 para. 2** of the application of s. 278 to a successor company on privatisation (in force on March 31st 1990 by virtue of S.I. 1990 No. 117 (C. 4)).
- C52** S. 278 excluded by **Ports Act 1991** (c. 52, SIF 58), **s. 35(6)(7)**
- C53** Ss. 272-281: definition of "effective 51 percent. subsidiary" applied (E.W.S.) by **Ports Act 1991** (c. 52, SIF 58), **s. 17(13)**
- C54** See **Finance Act 1988** (c. 39, SIF 63:1, 2), **Sch. 9 paras. 3, 8**, deferred charges on gains before March 31st 1982.
- C55** See **Finance (No. 2) Act 1987** (c. 51), s. 95(4), **Sch. 6 para. 4(2)**. See Sch. 6 para. 4(2) for wording to be inserted where the accounting period in which the chargeable company ceases to be a member of the group ends after a day to be appointed.
- C56** S. 278(3A): see **Finance (No. 2) Act 1987** (c. 51), s. 95(4), **Sch. 6 para. 4(2)**. See Sch. 6 para. 4(2) for wording to be inserted where the accounting period in which the chargeable company ceases to be a member of the group ends after a day to be appointed.
- C57** See **Finance Act 1989** (c. 26), **s. 138(7)**. S. 278(3E) will have effect where the accounting period in which the company referred to in subs. (3B) ceases to be a member of a group ends after the day appointed under **Finance (No. 2) Act 1987** (c. 51), s. 95(4), **Sch. 6 para. 4** (not earlier than March 31st 1992).
- C58** See **Finance (No. 2) Act 1987** (c. 51), s. 95(4), **Sch. 6 para. 4** for changes where the accounting period in which the Chargeable company ceases to be a member of the group ends after a day to be appointed.
- C59** See **Finance Act 1974** (c. 30), s. 47, **Sch. 10 para. 1**, s. 277 applied in relation to development gains and tax in respect thereof.

#### **Marginal Citations**

- M5** 1967 c. 54.

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

**[<sup>F77</sup>278A Exemption from charge under s. 278 in the case of certain mergers.**

- (1) Subject to the following provisions of this section, section 278 above shall not apply in a case where—
- (a) as part of a merger, a company (in this section referred to as “company A”) ceases to be a member of a group of companies (in this section referred to as “the A group”); and
  - (b) it is shown that the merger was carried out for bona fide commercial reasons and that the avoidance of liability to tax was not the main or one of the main purposes of the merger.
- (2) In this section “merger” means an arrangement (which in this section includes a series of arrangements)—
- (a) whereby one or more companies (in this section referred to as “the acquiring company” or, as the case may be, “the acquiring companies”) none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A; and
  - (b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent. of the ordinary share capital of which was then beneficially owned by two or more of the acquiring companies; and
  - (c) in respect of which the conditions in subsection (4) below are fulfilled.
- (3) For the purposes of subsection (2) above, a member of a group of companies shall be treated as carrying on as one business the activities of that group.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that not less than 25 per cent. by value of each of the interests acquired as mentioned in paragraphs (a) and (b) of subsection (2) above consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in the said paragraph (b) consists of a holding of share capital (of any description) or debentures or both; and
  - (b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(a) above is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(b) above; and
  - (c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (2) (a) above, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in subsection (2)(b) above;
- and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.
- (5) Notwithstanding the provisions of section 272(1)(a) above, references in this section to a company include references to a company resident outside the United Kingdom.]

*Status: Point in time view as at 15/11/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

### Textual Amendments

**F77** S. 278A inserted by Finance Act 1970 (c. 24), s. 27.

### Modifications etc. (not altering text)

**C60** See Finance Act 1973 (c. 51), s. 38(5), application of ss. 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation rights.

**C61** Ss. 272-281: definition of "effective 51 percent. subsidiary" applied (E.W.S.) by Ports Act 1991 (c. 52, SIF 58), s. 17(13)

## 279 Shares in subsidiary member of a group.

(1) This section has effect if a company (in this section called "the subsidiary") ceases to be a member of a group of companies, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this section 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 [<sup>F78</sup>but before 20th April 1977], and
- (b) within the period of six years ending with the date on which the subsidiary ceases to be a member of the group;

and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

(2) The chargeable company shall be treated, for all the purposes of [<sup>F79</sup>the Capital Gains Tax Act 1979], as if immediately before the earlier occasion it had sold, and immediately reacquired, 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 section 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 section, or in pursuance of subsection (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 subsection 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 subsection (3) above.

(5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time

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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, 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 section.

- (6) For the purposes of this section there is a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if [<sup>F80</sup>section 85 or section 86 of the Capital Gains Tax Act 1979] (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 [<sup>F80</sup>section 86 of the Capital Gains Tax Act 1979] shares are to be treated as cancelled and replaced by a new issue, references in this section to a disposal of shares include references to the occasion of their being so treated.
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the subsidiary ceases to be a member of the group in an accounting period of the chargeable company (or, as the case may be, of the company assessable under subsection (3) above) ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

#### Textual Amendments

- F78** Words inserted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 157(2), [Sch. 7 para. 2](#) for 1979 to 80 et seq.
- F79** Words inserted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 157(2), [Sch. 7 para. 8](#) for 1979-80 et seq.
- F80** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 157(2), [Sch. 7 para. 9](#) for 1979 to 80 et seq.

#### Modifications etc. (not altering text)

- C62** See [Finance Act 1973 \(c. 51\)](#), s. 38(5) application of ss. 278 to 279 in relation to certain disposals by non-resident companies of offshore exploration or exploitation right; [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\)](#), s. 16 ss. 278 and 279 to apply to non-resident group of companies and [Finance Act 1980 \(c. 48\)](#), s. 117, [Sch. 18 paras. 10, 15](#) application of ss. 278 and 279 to exempt distributions and chargeable payments.
- C63** Ss. 272-281: definition of "effective 51 percent. subsidiary" applied (E.W.S.) by [Ports Act 1991 \(c. 52, SIF 58\)](#), s. 17(13)
- C64** See [Finance Act 1974 \(c. 30\)](#), s. 47, [Sch. 10 para. 1](#), s. 279(4)(5) applied in relation to development gains and tax in respect thereof.

### *Losses attributable to depreciatory transactions*

#### 280 Transactions in a group.

- (1) This section has effect as respects a disposal of shares in, or securities of, a company (in this section referred to as an "ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after [<sup>F81</sup>31st March 1982]; and for this purpose "depreciatory transaction" means—

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*Status: Point in time view as at 15/11/1991.*

**Changes to legislation:** *There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I. (See end of Document for details)*

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- (a) any disposal of assets at other than market value by one member of a group of companies to another, or
- (b) [<sup>F82</sup>unless the ultimate disposal occurred before 30th April 1969], any other transaction satisfying the conditions of subsection (2) below:

Provided that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

- (2) The conditions referred to in subsection (1)(b) above are—
  - (a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and
  - (b) that the parties to the transaction were or included two or more companies which at the time of the transaction were members of the same group of companies.
- (3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under [<sup>F83</sup>section 135 of the Companies Act 1985] shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.
- (4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, 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 making the ultimate disposal is not a member of the said group when he 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.

- (5) The inspector or the Commissioners shall make the decision under subsection (4) 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 . . . [<sup>F84</sup>], but allowance may be made for any other transaction on or after [<sup>F81</sup>31st March 1982] which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.
- (6) If, under subsection (4) 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 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.



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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 subsection may be made at any time.

(7) For the purposes of this section—

“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.

(8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under [F85 section 22(2) of the Capital Gains Tax Act 1979] that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

#### Textual Amendments

- F81** Words substituted by [Finance Act 1988 \(c. 39, SIF 63:1, 2\), s. 96\(2\), Sch. 8 para. 6](#) in relation to disposals on or after April 6th 1988— capital gains tax rebasing.
- F82** Words repealed by [Finance Act 1988 \(c. 39, SIF 63:1, 2\), Sch. 14 Pt. VII](#).
- F83** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9\), s. 30, Sch. 2](#) with effect from July 1st 1985.
- F84** Words repealed by [Finance Act 1974 \(c. 30\), ss. 29, 57\(6\), Sch. 14 Pt. VI](#) in relation to disposals after March 26th 1974.
- F85** Words substituted by [Capital Gains Tax Act 1979 \(c. 14, SIF 63:2\), s. 157\(2\), Sch. 7 para. 9](#) for 1979-80 et seq.

#### Modifications etc. (not altering text)

- C65** [Ss. 272-281](#): definition of "effective 51 percent. subsidiary" applied (E.W.S.) by [Ports Act 1991 \(c. 52, SIF 58\), s. 17\(13\)](#)

## 281 Dividend stripping.

(1) The provisions of this section apply where one company (in this section referred to as “the first company”) has a holding in another company (in this section referred to as “the second company”) and the following conditions are fulfilled—

- (a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,
- (b) that the first company is not a dealing company in relation to the holding,
- (c) that a distribution is or has been made after 29th April 1969 to the first company in respect of the holding, and
- (d) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) Where this section applies in relation to a holding section 280 above shall apply in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section 273 [F86 or 273A] above applies, as if the



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distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were:

Provided that the distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

- (3) This section shall be construed as one with section 280 above.
- (4) For the purposes of this section a company is “a dealing company” in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company’s trading profits.
- (5) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—
- (a) a company’s holdings of different classes in another company shall be treated as separate holdings, and
  - (b) holdings of shares or securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (6) For the purposes of subsection (1) above—
- (a) all a company’s holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
  - (b) a company’s holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,
- and section [F87839 of the Taxes Act 1988] (definition of connected persons) shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words “or exercise control of” in each place where they occur there were inserted the words “or to acquire a holding in”.

#### Textual Amendments

**F86** Words inserted by [Finance Act 1990 \(c. 29\), s. 70\(4\)](#) in relation to disposals on or after March 20th 1990.

**F87** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), Sch. 29 para. 32](#).

#### Modifications etc. (not altering text)

**C66** [Ss. 272-281](#): definition of “effective 51 percent. subsidiary” applied (E.W.S.) by [Ports Act 1991 \(c. 52, SIF 58\), s. 17\(13\)](#)

**Status:**

Point in time view as at 15/11/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Income and Corporation Taxes Act 1970 (repealed 6.4.1992), Chapter I.