

SCHEDULES

SCHEDULE 20

Sections 69 and 70.

RETIREMENT RELIEF ETC

PART I

INTERPRETATION

- 1 (1) This paragraph and paragraphs 2 and 3 below have effect for the purposes of this Schedule and sections 69 and 70 of this Act.
- (2) In the provisions referred to above—
- " commercial association of companies " means a company together with such of its associated companies, within the meaning of section 302 of the Taxes Act, as carry on businesses which are of such a nature that the businesses of the company and the associated companies taken together may be reasonably considered to make up a single composite undertaking;
- " family company " means, in relation to an individual, a company the voting rights in which are—
- (a) as to not less than 25 per cent, exercisable by the individual, or
- (b) as to more than 50 per cent, exercisable by the individual or a member of his family and, as to not less than 5 per cent, exercisable by the individual himself;
- " family " means, in relation to an individual, the husband or wife of the individual and a relative of the individual or of the individual's husband or wife and, for this purpose, " relative " means brother, sister, ancestor or lineal descendant ;
- " full-time working director ", in relation to one or more companies, means a director who is required to devote substantially the whole of his time to the service of that company or, as the case may be, those companies taken together, in a managerial or technical capacity;
- " group of companies " means a company which has one or more 51 per cent subsidiaries, together with those subsidiaries ;
- " holding company " means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 51 per cent subsidiaries ;
- " permitted period " means a period of one year or such longer period as the Board may, in any particular case, by notice in writing allow;
- " trade ", " profession ", " vocation ", " office " and " employment " have the same meaning as in the Income Tax Acts ;
- " trading company " means a company whose business consists wholly or mainly of the carrying on of a trade or trades ;

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" trading group " means a group of companies the business of whose members, taken together, consists wholly or mainly of the carrying on of a trade or trades.

- (3) For the purposes of sub-paragraph (2) above, voting rights exercisable by trustees of a settlement are to be treated as voting rights exercisable by a member of the family of an individual if—
- (a) the individual or any member of his family is a beneficiary under the settlement; and
 - (b) no one, other than the individual or a member of his family, is for the time being entitled under the settlement to receive any capital or income of the settled property ; and
 - (c) the terms of the settlement are such that no one other than the individual or a member of his family can become entitled to capital or income except upon the failure (for whatever reason) of the individual or a member of his family to become so entitled.
- (4) Any reference in sub-paragraph (3) above to a person being or becoming entitled to any capital or income of the settled property includes a reference to a person—
- (a) whose entitlement is subject to a power which could be so exercised as to require all or any of the capital or income in question to be paid to some other person ; or
 - (b) whose entitlement depends upon his exercising a power in his own favour.
- 2 (1) For the purposes of the provisions referred to in paragraph 1(1) above, where, as part of a reorganisation, within the meaning of section 77 of the Capital Gains Tax Act 1979, there is a disposal of shares or securities of a company and, apart from this sub-paragraph, the shares disposed of and the new holding (as defined in that section) would fall to be treated, by virtue of section 78 of that Act, as the same asset, the said section 78 shall not apply if the individual concerned so elects or, in the case of a trustees' disposal, if the trustees and the individual concerned jointly so elect; and an election under this sub-paragraph shall be made by notice in writing given to the Board not more than two years after the end of the year of assessment in which the disposal occurred.
- (2) In sub-paragraph (1) above, the reference to a reorganisation, within the meaning of section 77 of the Capital Gains Tax Act 1979, includes a reference to an exchange of shares or securities which is treated as such a reorganisation by virtue of section 85(3) of that Act.
- 3 (1) A person who has been concerned in the carrying on of a business shall be treated as having retired on ill-health grounds if, on production of such evidence as the Board may reasonably require, the Board are satisfied—
- (a) that he has ceased to be engaged in and, by reason of ill health, is incapable of engaging in work of the kind which he previously undertook in connection with that business ; and
 - (b) that he is likely to remain permanently so incapable.
- (2) In sub-paragraph (1) above, the reference to a person being concerned in the carrying on of a business is a reference to his being so concerned personally or as a member of a partnership carrying on the business; and the business which is relevant for the purposes of the provisions referred to in paragraph 1(1) above is that referred to—
- (a) in subsection (3) or subsection (4) of section 69 of this Act in relation to a material disposal of business assets ;

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- (b) in subsection (5) of section 70 of this Act in relation to a trustees' disposal;
and
 - (c) in subsection (7) of section 70 of this Act in relation to an associated disposal.
- (3) A person who has been a full-time working director of a company or of two or more companies shall be treated as having retired on ill-health grounds if, on production of such evidence as the Board may reasonably require, the Board are satisfied—
- (a) that he has ceased to serve and, by reason of ill-health, is incapable of serving that company or, as the case may be, those companies in a managerial or technical capacity ; and
 - (b) that he is likely to remain permanently incapable of serving in such a capacity that company or those companies (as the case may be) or any other company engaged in business of a kind carried on by that company or those companies.
- (4) In relation to an employee's disposal, a person who has been exercising any office or employment shall be treated as having retired on ill-health grounds if, on production of such evidence as the Board may reasonably require, the Board are satisfied—
- (a) that he has ceased to exercise and, by reason of ill-health, is incapable of exercising that office or employment; and
 - (b) that he is likely to remain permanently so incapable.
- 4 (1) In this Schedule-
- (a) " material disposal of business assets " has the same meaning as in section 69 of this Act;
 - (b) " employee's disposal" means a disposal falling within subsection (1) of section 70 of this Act;
 - (c) " trustees' disposal" means a disposal falling within subsection (3) of section 70 of this Act and, in relation to such a disposal, " the qualifying beneficiary " has the meaning assigned to it by paragraph (b) of that subsection;
 - (d) " associated disposal" has the meaning assigned to it by section 70(7) of this Act;
- and " qualifying disposal " means any of the disposals referred to in paragraphs (a) to (d) above.
- (2) Any reference in this Schedule to the qualifying period is a reference to the period of at least one year which,—
- (a) in relation to a material disposal of business assets, is referred to in subsection (3), subsection (4)(a) or subsection (5) (as the case may require) of section 69 of this Act;
 - (b) in relation to an employee's disposal, is referred to in section 70(2)(a) of this Act;
 - (c) in relation to a trustees' disposal, is referred to in subsection (4) or subsection (5) (as the case may require) of section 70 of this Act;
- and, in relation to an associated disposal, any reference in this Schedule to the qualifying period is a reference to that period which is the qualifying period in relation to the material disposal of business assets with which the associated disposal is associated in accordance with section 70(7) of this Act.
- (3) In relation to a qualifying disposal, any reference in this Schedule to the amount available for relief is a reference to the amount determined in accordance with paragraphs 13 to 16 below.

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PART II

THE OPERATION OF THE RELIEF

Disposals on which relief may be given

- 5 (1) Relief in accordance with this Schedule shall not be given in respect of any disposal unless the qualifying period relating to that disposal ends on or after 6th April 1985.
- (2) Except in the case of a disposal which is made by an individual who has attained the age of 60, relief in accordance with this Schedule shall be given only on the making of a claim not later than two years after the end of the year of assessment in which the disposal occurred.
- (3) In the case of a trustees' disposal, relief in accordance with this Schedule shall be given only on a claim made jointly by the trustees and the beneficiary concerned.
- (4) Where a claim for relief in accordance with this Schedule is dependent upon an individual having retired on ill-health grounds below the age of 60, the claim shall be made to the Board.

Gains qualifying for relief

- 6 Subject to paragraphs 9 and 10 below, in the case of any qualifying disposal other than one of shares or securities of a company, the gains accruing to the individual or, in the case of a trustees' disposal, the trustees on the disposal of chargeable business assets comprised in the qualifying disposal shall be aggregated, and only so much of that aggregate as exceeds the amount available for relief shall be chargeable gains (but not so as to affect liability in respect of gains accruing on the disposal of assets other than chargeable business assets).
- 7 (1) Subject to paragraphs 9 to 11 below, in the case of a qualifying disposal of shares or securities of a trading company which is not a holding company,—
- (a) the gains which on the disposal accrue to the individual or, as the case may be, the trustees shall be aggregated, and
 - (b) of the appropriate proportion of the aggregated gains, only so much as exceeds the amount available for relief shall constitute chargeable gains (but not so as to affect liability in respect of gains representing the balance of the aggregated gains).
- (2) For the purposes of sub-paragraph (1)(b) above, " the appropriate proportion " is that which that part of the value of the company's chargeable assets immediately before the end of the qualifying period which is attributable to the value of the company's chargeable business assets bears to the whole of that value, but, in the case of a company which has no chargeable assets, " the appropriate proportion " is the whole.
- (3) For the purposes of this paragraph, every asset is a chargeable asset except one, on the disposal of which by the company immediately before the end of the qualifying period, no gain accruing to the company would be a chargeable gain.
- 8 (1) Subject to paragraphs 9 to 11 below, in the case of a qualifying disposal of shares or securities of a holding company,—
- (a) the gains which on the disposal accrue to the individual or, as the case may be, the trustees shall be aggregated, and

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- (b) of the appropriate proportion of the aggregated gains, only so much as exceeds the amount available for relief shall constitute chargeable gains (but not so as to affect liability in respect of gains representing the balance of the aggregated gains).
- (2) For the purposes of sub-paragraph (1)(b) above, " the appropriate proportion " is that which that part of the value of the trading group's chargeable assets immediately before the end of the qualifying period which is attributable to the value of the trading group's chargeable business assets bears to the whole of that value ; but, in the case of a trading group which has no chargeable assets, " the appropriate proportion " is the whole.
- (3) For the purposes of sub-paragraph (2) above,—
- (a) any reference to the trading group's chargeable assets or chargeable business assets is a reference to the chargeable assets or, as the case may be, chargeable business assets of every member of the trading group ; and
- (b) subject to paragraph (c) below, every asset is a chargeable asset except one, on the disposal of which by the member of the group concerned immediately before the end of the qualifying period no gain accruing to that member would be a chargeable gain ; and
- (c) a holding by one member of the trading group of the ordinary share capital of another member of the group is not a chargeable asset.
- (4) Where the whole of the ordinary share capital of a 51 per cent, subsidiary of the holding company is not owned directly or indirectly by that company, then, for the purposes of sub-paragraph (2) above, the value of the chargeable assets and chargeable business assets of that subsidiary shall be taken to be reduced by multiplying it by a fraction of which the denominator is the whole of the ordinary share capital of the subsidiary and the numerator is the amount of that share capital owned, directly or indirectly, by the holding company.
- (5) Expressions used in sub-paragraph (4) above have the same meaning as in section 532(1) of the Taxes Act (subsidiaries).
- 9 (1) If, in the case of a trustees' disposal, there is, in addition to the qualifying beneficiary, at least one other beneficiary who, at the end of the qualifying period, has an interest in possession in the whole of the settled property or, as the case may be, in a part of it which consists of or includes the shares, securities or asset which is the subject matter of the disposal, only the relevant proportion of the gain which accrues to the trustees on the disposal shall be brought into account under paragraph 6, paragraph 7 or paragraph 8 above (as the case may require) and the balance of the gain shall, accordingly, be a chargeable gain.
- (2) For the purposes of sub-paragraph (1) above, the relevant proportion is that which, at the end of the qualifying period, the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares, securities or asset in question bears to the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part.
- (3) The reference in sub-paragraph (2) above to the qualifying beneficiary's interest is a reference to the interest by virtue of which he is the qualifying beneficiary and not to any other interest he may hold.
- 10 (1) If, in the case of an associated disposal,—

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- (a) the asset in question was in use for the purposes of a business as mentioned in section 70(7)(c) of this Act for only part of the period in which it was in the ownership of the individual making the disposal, or
 - (b) for any part of the period in which the asset in question was in use for the purposes of a business as mentioned in section 70(7)(c) of this Act, the individual making the disposal was not concerned in the carrying on of that business (whether personally, as a member of a partnership or as a full-time working director of any such company as is referred to in section 69(3)(b) of this Act), or
 - (c) for the whole or any part of the period in which the asset in question was in use for the purposes of a business as mentioned in section 70(7)(c) of this Act, its availability for that use was dependent upon the payment of rent, only such part of the gain which accrues on the disposal as appears to the Board to be just and reasonable shall be brought into account under paragraph 6, paragraph 7 or paragraph 8 above (as the case may require) and the balance of the gain shall, accordingly, be a chargeable gain.
- (2) In determining how much of a gain it is just and reasonable to bring into account as mentioned in sub-paragraph (1) above, the Board shall have regard to the length of the period the asset was in use as mentioned in that sub-paragraph and the extent to which any rent paid was less than the amount which would have been payable in the open market for the use of the asset.
- (3) In sub-paragraphs (1) and (2) above "rent" includes any form of consideration given for the use of the asset.
- 11 (1) This paragraph applies where—
- (a) there is a material disposal of business assets or a trustees' disposal which (in either case) consists of a disposal which the individual or trustees is or are treated as making by virtue of section 72 of the Capital Gains Tax Act 1979 in consideration of a capital distribution ; and
 - (b) the capital distribution consists wholly of chargeable business assets of the company or partly of such assets and partly of money or money's worth.
- (2) Where the capital distribution consists wholly of chargeable business assets, no relief shall be given under this Schedule in respect of the gains accruing on the disposal.
- (3) Where the capital distribution consists only partly of chargeable business assets, the gains accruing on the disposal (aggregated as mentioned in paragraph 7(1)(a) or paragraph 8(1)(a) above) shall be reduced for the purposes of this Schedule by multiplying them by the fraction of which—
- (a) the numerator is the part of the capital distribution which does not consist of chargeable business assets ; and
 - (b) the denominator is the entire capital distribution ;
- and it shall be to that reduced amount of aggregated gains that, in accordance with sub-paragraph (1)(b) of paragraph 7 or, as the case may be, paragraph 8 above, the appropriate proportion determined under sub-paragraph (2) of that paragraph shall be applied.
- (4) Any question whether or to what extent a capital distribution consists of chargeable business assets shall be determined by reference to the status of the assets immediately before the end of the qualifying period.

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- 12 (1) Subject to paragraphs 9 to 11 above, in arriving at the aggregate gains under any of paragraphs 6, 7(1) and 8(1) above,—
- (a) the respective amounts of the gains shall be computed in accordance with the provisions of the Capital Gains Tax Act 1979 fixing the amount of chargeable gains, and
 - (b) any allowable loss which accrues on the qualifying disposal concerned shall be deducted,
- and the provisions of this Schedule shall not affect the computation of the amount of any allowable loss.
- (2) Subject to the following provisions of this paragraph, in paragraphs 6 to 11 above, "chargeable business asset" means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by—
- (a) the individual concerned ; or
 - (b) that individual's family company ; or
 - (c) a member of a trading group of which the holding company is that individual's family company ; or
 - (d) a partnership of which the individual concerned is a member.
- (3) An asset is not a chargeable business asset if, on the disposal of it, no gain which might accrue would be a chargeable gain.
- (4) In relation to a trustees' disposal, references in sub-paragraph (2) above to the individual shall be construed as references to the beneficiary concerned.
- (5) Sub-paragraph (6) below applies if—
- (a) a qualifying disposal falling within paragraph 7 or paragraph 8 above is a disposal which the individual or trustees concerned is or are treated as making by virtue of section 72 of the Capital Gains Tax Act 1979 in consideration of a capital distribution; and
 - (b) not later than two years after the end of the year of assessment in which the individual or the trustees received the capital distribution, the individual or trustees by notice in writing to the inspector elects or elect that that subparagraph should apply.
- (6) If, in a case where this sub-paragraph applies in relation to a qualifying disposal, any part of the assets of the company concerned consists, as at the end of the qualifying period, of the proceeds of the sale of an asset sold not more than six months before the end of that period, then, sub-paragraph (2) above and paragraph 7 or, as the case may be, paragraph 8 above shall have effect as if, at that time—
- (a) the asset remained the property of the company and was in use for the purposes for which it was used before its sale; and
 - (b) the proceeds of sale of the asset did not form part of the assets of the company.

The amount available for relief: the basic rule

- 13 (1) Subject to the following provisions of this Part of this Schedule, on a qualifying disposal by an individual the amount available for relief by virtue of sections 69 and 70 of this Act is a percentage of £100,000 determined according to the length of the qualifying period which is appropriate to the disposal on a scale rising arithmetically

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from 10 per cent, where that period is precisely one year to 100 per cent, where it is ten years.

- (2) The amount available for relief by virtue of section 70 of this Act on a trustees' disposal shall be determined, subject to sub-paragraph (3) below, in accordance with sub-paragraph (1) above on the assumption that the trustees' disposal is a qualifying disposal by the qualifying beneficiary.
- (3) If, on the same day, there is both a trustees' disposal and a material disposal of business assets by the qualifying beneficiary, the amount available for relief shall be applied to the beneficiary's disposal in priority to the trustees' disposal.

Aggregation, of earlier business periods

- 14 (1) If, apart from this paragraph, the qualifying period appropriate to a qualifying disposal (in this paragraph referred to as " the original qualifying period ") would be less than ten years but throughout some period (in this paragraph referred to as " the earlier business period ") which—
 - (a) ends not earlier than two years before the beginning of the original qualifying period, and
 - (b) falls, in whole or in part, within the period of ten years ending at the end of the original qualifying period,

the individual making the disposal or, as the case may be, the relevant beneficiary was concerned in the carrying on of another business (in this paragraph referred to as the " previous business ") then, for the purpose of determining the amount available for relief on the qualifying disposal, the length of the qualifying period appropriate to that disposal shall be redetermined on the assumptions and subject to the provisions set out below.
- (2) For the purposes of the redetermination referred to in subparagraph (1) above, it shall be assumed that the previous business is the same business as the business at retirement and, in the first instance, any time between the end of the earlier business period and the beginning of the qualifying period shall be disregarded (so that those two periods shall be assumed to be one continuous period).
- (3) The reference in sub-paragraph (1) above to a person being concerned in the carrying on of a business is a reference to his being so concerned personally or as a member of a partnership or, if the business was owned by a company, then as a full-time working director of that company or, as the case may be, of any member of the group or commercial association of which it is a member ; and the reference in sub-paragraph (2) above to the business at retirement is a reference to that business which, in relation to the qualifying disposal, is referred to—
 - (a) in subsection (3), subsection (4) or subsection (5) of section 69 of this Act where the qualifying disposal is a material disposal of business assets ;
 - (b) in subsection (5) of section 70 of this Act where that disposal is a trustees' disposal; and
 - (c) in subsection (7) of section 70 of this Act where that disposal is an associated disposal.
- (4) Any extended qualifying period resulting from the operation of sub-paragraph (2) above shall not begin earlier than the beginning of the period of ten years referred to in sub-paragraph (1)(b) above.

- (5) If the earlier business period ended before the beginning of the original qualifying period, any extended qualifying period which would otherwise result from the operation of the preceding provisions of this paragraph shall be reduced by deducting therefrom a period equal to that between the ending of the earlier business period and the beginning of the original qualifying period.
- (6) Where there is more than one business which qualifies as the previous business and, accordingly, more than one period which qualifies as the earlier business period, this paragraph shall apply first in relation to that one of those businesses in which the individual in question was last concerned and shall then again apply (as if any extended qualifying period resulting from the first application were the original qualifying period) in relation to the next of those businesses and so on.

Relief given on earlier disposal

- 15 (1) In any case where—
- (a) an individual makes a qualifying disposal or is the qualifying beneficiary in relation to a trustees' disposal, and
 - (b) relief has been (or falls to be) given under this Schedule in respect of an earlier disposal which was either a qualifying disposal made by the individual or a trustees' disposal in respect of which he was the qualifying beneficiary,
- the amount which, apart from this paragraph, would be the amount available for relief on the disposal mentioned in paragraph (a) above shall not exceed the limit in sub-paragraph (3) below.
- (2) In sub-paragraph (3) below—
- (a) the disposal falling within sub-paragraph (1)(a) above is referred to as " the later disposal" ; and
 - (b) the disposal falling within sub-paragraph (1)(b) above or, if there is more than one such disposal, each of them is referred to as " the earlier disposal" .
- (3) The limit referred to in sub-paragraph (1) above is the difference between—
- (a) the amount which would be available for relief on the later disposal if the qualifying period appropriate to that disposal (as redetermined where appropriate under paragraph 14 above) were extended by the addition of a period equal to so much (if any) of the qualifying period appropriate to the earlier disposal (or, as the case may be, to each of the earlier disposals) as does not already fall within the qualifying period appropriate to the later disposal; and
 - (b) the amount of relief given under this Schedule on the earlier disposal or, as the case may be, the aggregate of the relief so given on all the earlier disposals.
- (4) References in this paragraph to relief given under this Schedule include references to relief given under section 34 of the Finance Act 1965 or section 124 of the Capital Gains Tax Act 1979 ; and—
- (a) in relation to relief given under either of those sections paragraph (b) of sub-paragraph (1) above shall have effect as if, for the words from " which was" onwards, there were substituted " made by the individual"; and
 - (b) in the application of sub-paragraph (3) above where the earlier disposal was a disposal in respect of which relief was given under either of those sections,

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the reference in paragraph (a) to the qualifying period appropriate to the disposal is a reference,—

- (i) if the disposal took place on or before 11th April 1978, to the period of ten years ending with the disposal; and
- (ii) in any other case, to the qualifying period within the meaning of the section in question.

Aggregation of spouse's interest in the business

- 16 (1) In any case where—
- (a) an individual makes a material disposal of business assets, and
 - (b) the subject matter of that disposal (whether business, assets or shares or securities) was acquired, in whole or in part, from that individual's spouse, and
 - (c) that acquisition was either under the will or intestacy of the spouse or by way of lifetime gift and in the year of assessment in which occurred the spouse's death or, as the case may be, the lifetime gift, the individual and his spouse were living together, and
 - (d) as a result of the acquisition the individual acquired the whole of the interest in the business, assets, shares or securities concerned which, immediately before the acquisition or, as the case may be, the spouse's death, was held by the spouse, and
 - (e) not later than two years after the end of the year of assessment in which the material disposal occurred, the individual elects that this paragraph should apply,
- the period which, apart from this paragraph, would be the qualifying period appropriate to that disposal shall be extended by assuming that, in the conditions which under section 69 of this Act are the relevant conditions applicable to the disposal, any reference to the individual were a reference either to the individual or his spouse.
- (2) An election under sub-paragraph (1)(e) above shall be made by notice in writing to the inspector.
- (3) Where the acquisition referred to in sub-paragraph (1)(c) above was by way of lifetime gift, the amount available for relief on the material disposal concerned, having regard to the extension of the qualifying period under sub-paragraph (1) above, shall not exceed whichever is the lower of the two limits specified in sub-paragraph (4) below.
- (4) The limits referred to in sub-paragraph (3) above are—
- (a) the amount by which £100,000 exceeds the amount of relief given under this Schedule on disposals made by the spouse up to and including the disposal by way of lifetime gift referred to in sub-paragraph (1)(c) above and on trustees' disposals in respect of which the spouse was the qualifying beneficiary; and
 - (b) the amount which would have been available for relief on the material disposal if—
 - (i) the lifetime gift had not occurred; and
 - (ii) the material disposal had been made by the spouse ; and
 - (iii) anything done by the individual in relation to the business concerned after the lifetime gift was in fact made had been done by the spouse.

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- (5) In sub-paragraph (4)(a) above, the reference to relief given under this Schedule includes a reference to relief given under section 34 of the Finance Act 1965 or section 124 of the Capital Gains Tax Act 1979.