



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XIII

MISCELLANEOUS SPECIAL PROVISIONS

CHAPTER I

INTELLECTUAL PROPERTY

Patents and know-how

520 Allowances for expenditure on purchase of patent rights: post-31st March 1986 expenditure

- (1) Subject to subsection (3) below, where a person incurs capital expenditure after 31st March 1986 on the purchase of patent rights, allowances and charges shall, in accordance with subsections (4) and (6) below, be made to and on him in respect of that expenditure.
- (2) No allowance shall be made to a person under subsection (1) above in respect of any expenditure unless—
 - (a) the allowance falls in accordance with section 528(1) to be made to him in taxing his trade; or
 - (b) any income receivable by him in respect of the rights would be liable to tax.
- (3) For the purposes of this section and section 521 any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by that person on the first day on which he does carry it on, unless, before that first day, he has sold all the rights on the purchase of which the expenditure was incurred.

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- (4) For any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account by him in accordance with section 521(2) there shall be made to him—
- (a) except where paragraph (b) or (c) below applies, a writing-down allowance of an amount equal, subject to subsection (5) below, to—
 - (i) 25 per cent. of the excess; or
 - (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if, in a case where the period is a year of assessment and the allowance falls to be made in taxing a trade, the trade has been carried on for part only of that year;
 - (b) if an allowance falls to be made to that person in taxing his trade and the period is the chargeable period related to the permanent discontinuance of the trade, a balancing allowance equal to the whole of the excess; and
 - (c) if paragraph (b) above does not apply but the period is the chargeable period in which the last of the relevant patent rights comes to an end without any of those rights being revived, a balancing allowance equal to the whole of the excess.
- (5) For the purposes of subsection (4)(c) above the “relevant patent rights” at any time are those—
- (a) on the purchase of which the person concerned has incurred capital expenditure which has been taken into account in determining his qualifying expenditure for any chargeable period; and
 - (b) which he has not wholly disposed of.
- (6) For any chargeable period for which a person’s qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a balancing charge and the amount on which the charge is made shall be an amount equal to the difference.

521 Provisions supplementary to section 520

- (1) For the purposes of section 520(4) to (6), a person’s qualifying expenditure for a chargeable period is the aggregate of the following amounts—
- (a) any capital expenditure incurred by him on the purchase of patent rights, being expenditure incurred during the chargeable period or its basis period or at any previous time, other than expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period; and
 - (b) if, for the chargeable period immediately preceding the chargeable period in question, there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance under section 520(4)(a) made by reference to that excess.
- (2) If, in any chargeable period or its basis period, a person sells the whole or any part of any patent rights on the purchase of which he has incurred capital expenditure, then, for the purposes of section 520(4) to (6) and subsection (1) above, he is required to bring into account for that chargeable period disposal value equal, subject to subsections (3) and (4) below, to the net proceeds to him of that sale.
- (3) The disposal value to be brought into account by any person in respect of any patent rights as a result of one or more sales falling within subsection (2) above shall not (or,

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as the case may be, shall not in the aggregate) exceed the capital expenditure incurred by him on the purchase of those rights.

- (4) Where the person mentioned in subsection (3) above has acquired the patent rights as a result of a transaction which was, or a series of transactions each of which was, between persons who are connected with each other within the terms of section 839, that subsection shall have effect as if it referred to the capital expenditure on the purchase of the rights incurred by whichever party to that transaction or to any of those transactions incurred the greatest such expenditure.
- (5) Where a person incurs capital expenditure on the purchase of patent rights and either—
- (a) he and the seller are connected with each other within the terms of section 839, or
 - (b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties was the obtaining of an allowance under section 520(4),

there shall be disregarded for the purposes of section 520(4) and (6) and subsection (1) above so much (if any) of that expenditure as exceeds the disposal value to be brought into account by virtue of subsections (2) to (4) above by reason of the sale.

522 Allowances for expenditure on purchase of patent rights: pre-1st April 1986 expenditure

- (1) Subject to subsection (2) below, where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights, there shall, subject to and in accordance with the following provisions of this Chapter, be made to him writing-down allowances in respect of that expenditure during the writing-down period.
- (2) No writing-down allowance shall be made to a person under subsection (1) above in respect of any expenditure unless—
- (a) the allowance falls in accordance with section 528(1) to be made to him in taxing his trade; or
 - (b) any income receivable by him in respect of the rights would be liable to tax.
- (3) Subject to subsections (4) to (6) below, the writing-down period referred to in subsection (1) above is 17 years beginning with the chargeable period related to the expenditure.
- (4) Where the rights are purchased for a specified period, subsection (3) above shall have effect with the substitution for the reference to 17 years of a reference to 17 years or the number of years comprised within that period, whichever is the less.
- (5) Where the rights purchased begin one complete year or more after the commencement of the patent and subsection (4) above does not apply, subsection (3) above shall have effect with the substitution for the reference to 17 years of a reference to 17 years less the number of complete years which, when the rights began, have elapsed since the commencement of the patent or, if 17 complete years have so elapsed, of a reference to one year.
- (6) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of subsections (3) to (5) above as if it had been incurred by that person on the first day on which he does carry it on, unless, before

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that first day, he has sold all the rights on the purchase of which the expenditure was incurred.

- (7) Subsections (2) and (3) of section 75 of the 1968 Act (effect of providing for writing-down allowances during a writing-down period of a specified length) shall apply to this section as they apply to the provisions specified in subsection (1) of that section.

523 Lapses of patent rights, sales etc

- (1) Where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights and, before the end of the writing-down period under section 522, any of the following events occurs, that is to say—

- (a) the rights come to an end without being subsequently revived; or
- (b) he sells all those rights or so much of them as he still owns; or
- (c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed,

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

- (2) Where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights and, before the end of the writing-down period under section 522, either of the following events occurs, that is to say—

- (a) the rights come to an end without being subsequently revived, or
- (b) he sells all those rights, or so much of them as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed,

there shall, subject to and in accordance with the following provisions of this Chapter, be made to him for the chargeable period related to the event an allowance (“a balancing allowance”) equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

- (3) Where—

- (a) a person who incurred capital expenditure before 1st April 1986 on the purchase of patent rights sells all or any part of those rights, and
- (b) the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any,

there shall, subject to and in accordance with the following provisions of this Chapter, be made on him for the chargeable period related to the sale a charge (“a balancing charge”) on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to those net proceeds.

- (4) Where a person who incurred capital expenditure before 1st April 1986 on the purchase of patent rights sells a part of those rights and subsection (3) above does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount arrived at by—

- (a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and

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- (b) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,
and so on for any subsequent sales.
- (5) References in this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any writing-down allowances made in respect thereof for chargeable periods before that related to the event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.
- (6) Notwithstanding anything in subsections (1) to (5) above—
 - (a) no balancing allowance shall be made in respect of any expenditure incurred before 1st April 1986 unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and
 - (b) the total amount on which a balancing charge is made in respect of any expenditure incurred before 1st April 1986 shall not exceed the total writing-down allowances actually made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

524 Taxation of receipts from sale of patent rights

- (1) Subject to subsection (2) below, where a person resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to the provisions of this Chapter, be charged to tax under Case VI of Schedule D, for the chargeable period in which the sum is received by him and successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of six years (or such less fraction as has not already been charged).
- (2) If the person by notice served on the inspector not later than two years after the end of the chargeable period in which the sum was received, elects that the whole of the sum shall be charged to tax for that chargeable period, it shall be charged to tax accordingly.
- (3) Subject to subsection (4) below, where a person not resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a United Kingdom patent, then, subject to the provisions of this Chapter—
 - (a) he shall be chargeable to tax in respect of that sum under Case VI of Schedule D; and
 - (b) section 349(1) shall apply to that sum as if it was an annual sum payable otherwise than out of profits or gains charged to income tax; and
 - (c) all other provisions of the Tax Acts shall, save as therein otherwise provided, have effect accordingly.
- (4) If, not later than two years after the end of the year of assessment in which the sum is paid, the person to whom it is paid, by notice to the Board, elects that the sum shall be treated for the purpose of income tax for that year and each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments

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and assessments of tax for each of those years shall be made as are necessary to give effect to the election, but—

- (a) the election shall not affect the amount of tax which is to be deducted and assessed under section 349(1) and 350; and
 - (b) where any sum is deducted under section 349(1), any adjustments necessary to give effect to the election shall be made by way of repayment of tax; and
 - (c) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately falling to be paid for that year is less than the amount of tax paid for that year.
- (5) In subsections (3) and (4) above, “tax” shall mean income tax or, in subsection (3) in a case where the seller of the patent rights, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum, corporation tax.
 - (6) Where subsection (3) applies to charge a company to corporation tax in respect of a sum paid to it, subsection (4) shall not apply, but the company may, by notice given to the Board not later than two years after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than six years from the beginning of that in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum), and there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.
 - (7) Subject to subsections (8) and (9) below, where the person selling all or any part of any patent rights (“the seller”) acquired the rights sold, or the rights out of which they were granted, by purchase and the price paid by him consisted wholly or partly of a capital sum, the preceding provisions of this section shall apply as if any capital sum received by him when he sells the rights were reduced by the amount of that sum.
 - (8) Where between the purchase and the sale the seller has sold part of the rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under subsection (7) above in respect of the subsequent sale shall be itself reduced by the amount of that sum.
 - (9) Nothing in subsections (7) and (8) above shall affect the amount of income tax which is to be deducted and assessed under section 349(1) and (3) by virtue of subsection (3) above, and, where any sum is deducted under section 349(1), any adjustment necessary to give effect to the provisions of this subsection shall be made by way of repayment of tax.
 - (10) A claim for relief under this section shall be made to the Board.

525 Capital sums: death, winding up or partnership change

- (1) Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under section 524 dies or, being a body corporate, commences to be wound up—

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- (a) no sums shall be charged under that section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences; and
 - (b) the amount falling to be charged for the chargeable period in which the death occurs or the winding up commences shall, subject to subsection (2) below, be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent chargeable periods.
- (2) In the case of a death the personal representatives may, by notice served on the inspector not later than 30 days after notice has been served on them of the charge falling to be made by virtue of subsection (1) above, require that the income tax payable out of the estate of the deceased by reason of the increase provided for by that subsection shall be reduced so as not to exceed the total amount of income tax which would have been payable by him or out of his estate by reason of the operation of section 524 in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by that whole amount divided by the number of those years.
- (3) Where, under section 79 of the 1968 Act (succession to trades) as applied by section 532, a charge under section 524 falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, subsection (1) above shall have effect in relation to the discontinuance as it has effect where a body corporate commences to be wound up.
- (4) Where subsection (3) above applies—
- (a) the additional sum which, under subsection (1) above, falls to be charged for the chargeable period in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representatives) shall be charged separately for his proportion; and
 - (b) each partner (or, if he is dead, his personal representatives) shall have the same right to require a reduction of the total income tax payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under subsection (2) above in the case of a death, and that subsection shall have effect accordingly, but as if references to the amount of income tax which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax which would in that event have fallen to be paid or borne by the partner in question or out of his estate.
- (5) In this section any references to income tax paid or borne or payable or falling to be paid or borne by a person include, in cases where the income of a wife is deemed to be income of the husband, references to the income tax paid or borne, or payable or falling to be paid or borne, by his wife or her husband, as the case may be.

526 Relief for expenses

- (1) Where—

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- (a) a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent, or the obtaining of an extension of a term of a patent, or a rejected or abandoned application for a patent, and
- (b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains of that trade,

there shall be made to him, for the chargeable period in which those expenses were paid or incurred, an allowance equal to the amount thereof.

- (2) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the devising thereof (not being expenses in respect of which, or of assets representing which, an allowance falls to be made under any other provision of the Income Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

527 Spreading of royalties over several years

- (1) Where a royalty or other sum to which section 348 or 349(1) applies is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may on the making of a claim require that the income tax or corporation tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax or corporation tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.
- (2) Subsection (1) above shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.
- (3) In this section any reference to the income tax payable by a person includes, in cases where the income of a wife is deemed to be the income of the husband, references to the income tax payable by his wife or her husband, as the case may be.
- (4) Nothing in this section shall apply to any sum to which section 349(1) applies by virtue of section 524(3)(b).

528 Manner of making allowances and charges

- (1) An allowance or charge under section 520, 522 or 523 shall be made to or on a person in taxing his trade if—
 - (a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to tax under Case I of Schedule D for the chargeable period for which the allowance or charge is made, and
 - (b) at any time in that chargeable period or its basis period the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade.

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- (2) Where an allowance falls to be made to a person for any year of assessment under section 520, 522, 523 or 526 as those provisions apply for the purposes of income tax, and the allowance is not to be made in taxing a trade—
- (a) the amount of the allowance shall be deducted from or set off against his income from patents for that year of assessment, and
 - (b) if the amount to be allowed is greater than the amount of his income from patents for that year of assessment, the balance shall be deducted from or set off against his income from patents for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly.
- Relief shall be given under this subsection on the making of a claim.
- (3) Where an allowance falls to be made to a company for any accounting period under section 520, 522, 523 or 526 as those provisions apply for the purposes of corporation tax, and is not to be made in taxing a trade—
- (a) the allowance shall, as far as may be, be given effect by deducting the amount of the allowance from the company's income from patents of the accounting period;
 - (b) where the allowance cannot be given full effect under paragraph (a) above in that period by reason of a want or deficiency of income from patents, then (so long as the company remains within the charge to corporation tax) the amount unallowed shall be carried forward to the succeeding accounting period, and shall be treated for the purposes of that paragraph, and of any further application of this paragraph, as the amount of a corresponding allowance for that period.
- (4) Effect shall be given to any balancing charge under section 520 or 523 which is not to be made in taxing a trade—
- (a) if a charge to income tax, by making the charge under Case VI of Schedule D;
 - (b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from patents.

529 Patent income to be earned income in certain cases

- (1) Subject to subsection (2) below, any income from patent rights arising to an individual where the patent was granted for an invention actually devised by him, whether alone or jointly with any other person, shall be treated for all purposes as earned income.
- (2) Where any part of the rights in question or of any rights out of which they were granted has at any time belonged to any other person, so much only of that income shall be treated as earned income as is not properly attributable to the rights which have belonged to that other person.

530 Disposal of know-how

- (1) Subject to section 531, where after 31st March 1986 a person—
- (a) acquires know-how for use in a trade carried on by him, or
 - (b) acquires know-how, and thereafter sets up and commences a trade in which it is used,

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allowances and charges shall, in accordance with subsections (2) and (3) below, be made to and on him in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax.

- (2) For any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account by him in accordance with subsection (5) below, there shall be made to him—
- (a) unless the period is the chargeable period related to the permanent discontinuance of the trade, a writing-down allowance of an amount equal to—
 - (i) 25 per cent. of the excess, or
 - (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if the period is a year of assessment but the trade had been carried on for part only of the year; and
 - (b) if the period is the chargeable period related to the permanent discontinuance of the trade, a balancing allowance equal to the whole of the excess.
- (3) For any chargeable period for which a person's qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a balancing charge and the amount on which the charge is made shall be an amount equal to the difference.
- (4) For the purposes of subsections (2) and (3) above a person's qualifying expenditure for a chargeable period is the aggregate of the following amounts—
- (a) any capital expenditure incurred by him on the acquisition of know-how, being expenditure incurred during the chargeable period or its basis period or at any previous time, other than expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period; and
 - (b) if, for the chargeable period immediately preceding the chargeable period in question, there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance under subsection (2)(a) above made by reference to that excess.
- (5) If, in any chargeable period or its basis period, a person sells any know-how on the acquisition of which for use in a trade carried on by him he has incurred expenditure falling within subsection (1) above, then, for the purposes of subsections (2) to (4) above, he is required to bring into account for that chargeable period disposal value equal to the net proceeds to him of that sale.
- (6) Subject to section 531, where after 19th March 1968 and before 1st April 1986 a person—
- (a) acquired know-how for use in a trade carried on by him, or
 - (b) acquired know-how, and thereafter sets up and commences a trade in which it is used,

writing-down allowances in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax, shall be made in taxing the trade during a writing-down period of six years beginning with the chargeable period related to the expenditure; and if during that period he ceases to carry on the trade, an allowance equal to the amount of that expenditure then unallowed shall be made in taxing the trade for the chargeable period related to the discontinuance.

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- (7) For the purposes of subsections (1) and (6) above, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.
- (8) Subsection (2) of section 75 of the 1968 Act (effect of providing writing-down allowances during writing-down period of a specified length) shall apply to subsection (6) above as it applies to the provisions specified in subsection (1) of that section.

531 Provisions supplementary to section 530

- (1) Subject to subsection (7) below, where, after 19th March 1968, a person disposes of know-how which has been used in a trade carried on by him, and continues to carry on the trade after the disposal, the amount or value of any consideration received by him for the disposal shall—
 - (a) if it is received in respect of the disposal of know-how after 31st March 1986, so far as it is not brought into account as disposal value under section 530(5), nor is chargeable to tax as a revenue or income receipt;
 - (b) in any other case, so far as it is not chargeable to tax as a revenue or income receipt,be treated for all purposes as a trading receipt.
- (2) Subject to subsection (3) below, where, after 19th March 1968, a person disposes of a trade or part of a trade and, together with that trade or part, of know-how used in it, any consideration received by him for the know-how shall be dealt with in relation both to him and to the person acquiring the know-how, if that person provided the consideration, and for the purposes of corporation tax, income tax and capital gains tax, as a payment for goodwill.
- (3) Subsection (2) above shall not apply—
 - (a) to either of the persons concerned if they so elect by notice given jointly to the inspector within two years of the disposal, or
 - (b) to the person acquiring the know-how if the trade in question was, before the acquisition, carried on wholly outside the United Kingdom;and where know-how is disposed of with a trade or part of a trade, but that subsection is excluded in relation to the person acquiring it, section 530(1) and (6) shall apply as if that person had acquired it for use in a trade previously carried on by him.
- (4) Subject to subsections (5) and (7) below, any consideration received by a person for the disposal of know-how shall—
 - (a) if it is received in respect of the disposal of know-how after 31st March 1986 and is not brought into account as disposal value under section 530(5), or
 - (b) if it is neither chargeable to tax under subsection (1) above or otherwise as a revenue or income receipt, nor dealt with in relation to him as a payment for goodwill as mentioned in subsection (2) above, (whether the disposal took place before or after 31st March 1986),be treated as a profit or gain chargeable to tax under Case VI of Schedule D.
- (5) Where the person concerned has incurred expenditure wholly and exclusively in the acquisition or disposal of the know-how, the amount which would apart from this subsection be treated as a profit or gain chargeable to tax under Case VI of Schedule D

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shall be reduced by the amount of that expenditure; but a deduction shall not be twice made in respect of the same expenditure, whether under this subsection or otherwise.

- (6) Where subsection (4) above has effect in the case of an individual who devised the know-how in question, whether alone or jointly with any other person, the amount in respect of which he is chargeable to tax by virtue of that subsection shall be treated for all purposes as earned income.
- (7) Subsections (1) and (3) to (6) above and section 530(1) and (6) shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; and subsection (2) above shall apply in any such case with the omission of the words “Subject to subsection (3) below”.

In this subsection references to a body of persons include references to a partnership.

- (8) Where in connection with any disposal of know-how a person gives an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict his or another’s activities in any way, any consideration received in respect of the giving of the undertaking or its total or partial fulfilment shall be treated for the purposes of this section as consideration received for the disposal of the know-how.

532 Application of the 1968 Act

- (1) Subject to subsection (2) below, the Tax Acts shall have effect as if sections 520 to 531, this section and section 533 were contained in Part I of the 1968 Act, and any reference in the Tax Acts to any capital allowance to be given “by way of discharge or repayment of tax and to be available or available primarily against a specified class of income” shall include a reference to any capital allowance given in accordance with subsection (2) or (3) of section 528.
- (2) Schedule 7 to the 1968 Act (special provisions as to controlled sales) shall not (by virtue of subsection (1) above) apply with respect to expenditure incurred after 31st March 1986 on the purchase of patent rights.
- (3) Subject to subsection (2) above, in Part I of the 1968 Act, as applied by virtue of subsection (1) above to patent rights, the sum referred to in paragraph 4(1)(a) of Schedule 7 to that Act (special provisions as to controlled sales) is the amount of any capital expenditure on the acquisition of the patent rights remaining unallowed, computed in accordance with the provisions of section 523.
- (4) The reference in section 82(1) of the 1968 Act (certain payments not to be treated as capital expenditure) to any expenditure or sum in the case of which a deduction of income tax falls or may fall to be made under sections 348 to 350 does not include a sum in the case of which such a deduction falls or may fall to be so made by virtue of section 524(3)(b).
- (5) In Part I of the 1968 Act as so applied to know-how—
- (a) references in that Part to property and its purchase or sale include references to know-how and its acquisition or disposal;
 - (b) section 78, together with Schedule 7 to that Act (special provisions as to controlled sales), shall be omitted.

533 Interpretation of sections 520 to 532

- (1) In sections 520 to 532—
 - “income from patents” means—
 - (a) any royalty or other sum paid in respect of the user of a patent; and
 - (b) any amount on which tax is payable for any chargeable period by virtue of section 520(6), 523(3), 524 or 525;
 - “the commencement of the patent” means, in relation to a patent, the date as from which the patent rights become effective;
 - “patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;
 - “United Kingdom patent” means a patent granted under the laws of the United Kingdom.
- (2) Subject to subsection (3) below, in sections 520 to 532 any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent.
- (3) If a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the right subsists, the grantor shall be treated for the purposes of sections 520 to 532 as thereby selling the whole of the rights.
- (4) Where, under sections 46 to 49 of the Patents Act 1949 or any corresponding provisions of the law of any country outside the United Kingdom, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the Crown or the government of the country concerned, sections 520 to 532 shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.
- (5) Expenditure incurred in obtaining a right to acquire in the future patent rights as respects any invention in respect of which the patent has not yet been granted shall be deemed for all the purposes of sections 520 to 532 to be expenditure on the purchase of patent rights, and if the patent rights are subsequently acquired the expenditure shall be deemed for those purposes to have been expenditure on the purchase of those rights.
- (6) Any sum received from a person which by virtue of subsection (5) above is deemed to be expenditure incurred by him on the purchase of patent rights shall be deemed to be proceeds of a sale of patent rights.
- (7) In sections 530 and 531 “know-how” means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in the working of a mine, oil-well or other source of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto), or in the carrying out of any agricultural, forestry or fishing operations.

Copyright and public lending right

534 Relief for copyright payments etc

- (1) Where—

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- (a) an author of a literary, dramatic, musical or artistic work assigns the copyright in the work wholly or partially, or grants any interest in the copyright by licence; and
- (b) the consideration for the assignment or grant consists wholly or partially of a payment to which this section applies, being a payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment; and
- (c) the author was engaged on the making of the work for a period of more than 12 months;

he may, on making a claim, require that effect shall be given to the following provisions of this section in connection with that payment.

- (2) If the period for which he was engaged on the making of the work does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable 12 months before that date.
- (3) If the period for which he was engaged on the making of the work exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.
- (4) This section applies to—
 - (a) a lump sum payment, including an advance on account of royalties which is not returnable, and
 - (b) any payment of or on account of royalties or sums payable periodically, except that it shall not by virtue of paragraph (b) above apply to payments in respect of the copyright in any work which only become receivable more than two years after its first publication.
- (5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of the copyright in the same work which are receivable by the claimant, whether before or after the claim; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after the work's first publication.
- (6) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 535 as respects that payment.
- (7) In this section—
 - (a) “author” includes a joint author; and
 - (b) any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

535 Relief where copyright sold after ten years or more

- (1) Where not less than ten years after the first publication of the work the author of a literary, dramatic, musical or artistic work assigns the copyright in the work wholly or partially, or grants any interest in the copyright by licence, and—

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- (a) the consideration for the assignment or grant consists wholly or partially of a lump sum payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment, and
- (b) the copyright or interest is not assigned or granted for a period of less than two years,

he may by making a claim require that effect shall be given to the following provisions of this section in connection with that payment.

- (2) Except where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming receivable in six equal instalments at yearly intervals the first of which becomes receivable on the date when the payment actually became receivable.
- (3) Where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming receivable in a number of equal instalments at yearly intervals the first of which becomes receivable on the date when the payment actually became receivable, the number being the number of whole years in that period.
- (4) Subject to subsection (5) below, if the author dies, any instalment which under this section would, but for the death, be treated as becoming receivable after the death shall for income tax purposes be treated as becoming receivable on the date when the last instalment before the death is to be treated as becoming receivable.
- (5) If the personal representatives so elect—
 - (a) the total amount of income tax which would have been payable by the deceased or out of his estate in respect of the payment if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the death shall be computed, and
 - (b) the income tax payable out of the estate by reason of the provisions of subsection (4) above shall be reduced so as not to exceed the amount at (a) above.

The references in this subsection to the income tax payable by a person include, in cases where the income of a wife is deemed to be the income of the husband, references to the income tax payable by his wife or her husband, as the case may be.

- (6) If—
 - (a) the payment would, apart from this section, have been taken into account in assessing the profits or gains of a profession or vocation, and
 - (b) the profession or vocation is permanently discontinued (otherwise than on death) after the date on which the payment actually became receivable,any instalment which under this section would, but for the discontinuance, be treated as receivable on a date after the discontinuance shall for income tax purposes be treated as becoming receivable when the last instalment before the discontinuance is to be treated as becoming receivable, unless the author elects to be treated (for all purposes) as if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the discontinuance.

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- (7) Notice of any election under subsection (5) or (6) above shall be served on the inspector within two years of the death, or as the case may be of the discontinuance.
- (8) In any case where—
- (a) but for this section, the payment would be included in computing any profits or gains chargeable to tax under Case VI of Schedule D, and
 - (b) any amount would be deductible from that payment in computing those profits or gains (whether under the general provisions relating to Case VI or under section 105(1)),
- the amount which, under this section, is to be treated as receivable in instalments shall be the amount of the payment after that deduction, and effect shall not be given to that deduction in any other way.
- (9) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 534 as respects that payment.
- (10) Where it is necessary, in order to give effect to a claim or election under this section, or as a result of the claim or election, to make any adjustment by way of an assessment on any person, the assessment shall not be out of time if it is made within one year of the final determination of the claim or, as the case may be, within one year from the giving of notice of the election.
- (11) In this section—
- “author” includes a joint author;
 - “lump sum payment” includes an advance on account of royalties which is not returnable;
- and any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

536 Taxation of royalties where owner abroad

- (1) Subject to the provisions of this section, where the usual place of abode of the owner of a copyright is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge to income tax.
- (2) In subsection (1) above—
- “copyright” does not include a copyright in any dramatic work being a cinematograph production, or in any artistic work being a photograph intended to be used for the purposes of the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus; and
 - “owner of a copyright” includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright;
- and the reference to royalties or sums paid periodically for or in respect of a copyright does not include royalties or sums paid in respect of copies of works which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.
- (3) Subject to subsection (4) below, where any payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is

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entitled as against the owner of the copyright to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is so entitled to deduct.

- (4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the copyright such repayment of income tax as is proper in respect of the sum deducted by way of commission.
- (5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.
- (6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.

537 Public lending right

Sections 534, 535 and 536 shall have effect in relation to public lending right as they have effect in relation to copyright.

Artists' receipts

538 Relief for painters, sculptors and other artists

- (1) Where the artist obtains any sum for the sale of a painting, sculpture or other work of art, or by way of commission or fee for the creation of the work of art, and—
 - (a) he was engaged on the making of the work of art for a period of more than 12 months, or
 - (b) he was engaged for a period of more than 12 months in making a number of works of art for an exhibition, and the work is one of them,he may, by making a claim, require that effect shall be given to the following provisions of this section as respects that sum.
- (2) If the period for which he was engaged on the making of the work does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable 12 months before that date.
- (3) If the period for which he was engaged on the making of the work exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.

CHAPTER II

LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

539 Introductory

- (1) This Chapter shall have effect for the purposes of imposing, in the manner and to the extent therein provided, charges to tax, including tax under section 426, in respect of gains to be treated in accordance with this Chapter as arising in connection with policies of life insurance, contracts for life annuities and capital redemption policies.
- (2) Nothing in this Chapter shall apply—
 - (a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals; or
 - (b) to any policy of life insurance issued in connection with an approved scheme, as defined in Chapter I of Part XIV; or
 - (c) to a policy of insurance which constitutes, or is evidence of, a contract for the time being approved under section 621.

In the application of this subsection to Scotland, for the reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the Conveyancing (Scotland) Act 1924 (but including a security constituted by *ex facie* absolute disposition or assignment).

- (3) In this Chapter—
 - “assignment”, in relation to Scotland, means an assignment;
 - “capital redemption policy” means any insurance effected in the course of a capital redemption business as defined in section 458(3); and
 - “life annuity” means any annuity to which sections 656 and 657 apply and any annuity the contract for which is made on or after 1st June 1984 by a friendly society or branch thereof in the course of life or endowment business as defined in section 466.
- (4) For the purposes of this Chapter the falling due of a sum payable in pursuance of a right conferred by a policy or contract to participate in profits shall be treated as the surrender of rights conferred by the policy or contract.
- (5) This Chapter shall have effect only as respects policies of life insurance issued in respect of insurances made after 19th March 1968, contracts for life annuities entered into after that date, and capital redemption policies effected after that date.
- (6) A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of subsection (5) above and the following provisions of this Chapter as issued in respect of one made after that date if it is varied after that date so as to increase the benefits secured or to extend the term of the insurance.
- (7) A variation effected before the end of the year 1968 shall be disregarded for the purposes of subsection (6) above if its only effect was to bring into conformity with paragraph 2 of Schedule 9 to the Finance Act 1968 (which is re-enacted, as amended,

by paragraph 2 of Schedule 15 to this Act) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

(8) Subsections (1) to (7) above do not apply in relation to section 554.

540 Life policies: chargeable events

(1) Subject to the provisions of this section, in this Chapter “chargeable event” means, in relation to a policy of life insurance—

- (a) if it is not a qualifying policy, any of the following—
 - (i) any death giving rise to benefits under the policy;
 - (ii) the maturity of the policy;
 - (iii) the surrender in whole of the rights conferred by the policy;
 - (iv) the assignment for money or money’s worth of those rights; and
 - (v) an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section) except, if it ends with another chargeable event, the final year; and
- (b) if it is a qualifying policy (whether or not the premiums thereunder are eligible for relief under section 266), any of the above events, but—
 - (i) in the case of death or maturity, only if the policy is converted into a paid-up policy before the expiry of ten years from the making of the insurance, or, if sooner, of three-quarters of the term for which the policy is to run if not ended by death or disability;
 - (ii) in the case of a surrender or assignment or such an excess as is mentioned in paragraph (a)(v) above, only if it is effected or occurs within that time, or the policy has been converted into a paid-up policy within that time.

(2) The maturity of a policy is not a chargeable event in relation thereto if—

- (a) a new policy is issued in consequence of the exercise of an option conferred by the maturing policy, and
- (b) the whole of the sums becoming payable under the maturing policy are retained by the company with whom the insurance was made and applied in the payment of one or more premiums under the new policy,

unless the circumstances are such that the person making the insurance in respect of which the new policy is issued was an infant when the former policy was issued, and the former policy was one securing a capital sum payable either on a specified date falling not later than one month after his attaining 25 or on the anniversary of the policy immediately following his attainment of that age.

(3) Except as provided by section 544, no event is a chargeable event in relation to a policy issued in respect of an insurance made before 26th June 1982 if the rights conferred by the policy have at any time before that date and before the event been assigned for money or money’s worth and are not at the time of the event held by the original beneficial owner.

(4) No account shall be taken for the purposes of this section of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights or share concerned, or of any assignment between spouses living together.

- (5) Where subsection (1)(b) applies to a policy which has been varied so as to increase the premiums payable thereunder, it shall so apply as if the references in subsection (1)(b)(i) to the making of the insurance and the term of the policy were references respectively to the taking effect of the variation and the term of the policy as from the variation.
- (6) This section has effect subject to paragraph 20 of Schedule 15.

541 Life policies: computation of gain

- (1) On the happening of a chargeable event in relation to any policy of life insurance, there shall be treated as a gain arising in connection with the policy—
- (a) if the event is a death, the excess (if any) of the surrender value of the policy immediately before the death, plus the amount or value of any relevant capital payments, over the sum of the following—
 - (i) the total amount previously paid under the policy by way of premiums; and
 - (ii) the total amount treated as a gain by virtue of paragraph (d) below on the previous happening of chargeable events;
 - (b) if the event is the maturity of the policy, or the surrender in whole of the rights thereby conferred, the excess (if any) of the amount or value of the sum payable or other benefits arising by reason of the event, plus the amount or value of any relevant capital payments, over the sum of the following—
 - (i) the total amount previously paid under the policy by way of premiums; and
 - (ii) the total amount treated as a gain by virtue of paragraph (d) below on the previous happening of chargeable events;
 - (c) if the event is an assignment, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments or of any previously assigned share in the rights conferred by the policy, over the sum of the following—
 - (i) the total amount previously paid under the policy by way of premiums; and
 - (ii) the total amount treated as a gain by virtue of paragraph (d) below on the previous happening of chargeable events;
 - (d) if the event is the occurrence of such an excess as is mentioned in section 540(1)(a)(v), the amount of the excess.
- (2) Where, in a case falling within subsection (1)(b) above, a right to periodical payments arises by reason of the event, there shall be treated as payable by reason thereof an amount equal to the capital value of those payments at the time the right arises.
- (3) Where, in a case falling within subsection (1)(c) above, the assignment is between persons who are connected with each other within the meaning of section 839, the assignment shall be deemed to have been made for a consideration equal to the market value of the rights or share assigned.
- (4) Where there is an assignment, otherwise than for money or money's worth, of all the rights conferred by the policy, the calculations required to be made by section 546 shall be made, in the first instance, without regard to any surrender or assignment of part of or a share in those rights which takes place after the assignment, and any gain

treated as arising under subsection (1)(d) above on the calculation so made shall be treated as arising to the assignor.

(5) In this section—

- (a) “relevant capital payments” means, in relation to any policy, any sum or other benefit of a capital nature, other than one attributable to a person’s disability, paid or conferred under the policy before the happening of the chargeable event; and
- (b) references in this subsection and (in relation to premiums) in subsection (1) above to “the policy” include references to any related policy, that is to say, to any policy in relation to which the policy is a new policy within the meaning of paragraph 17 of Schedule 15, and any policy in relation to which that policy is such a policy, and so on;

and the provisions of this section are subject to paragraph 20 of Schedule 15.

(6) There shall be disregarded for the purposes of this section any amount which was treated under section 72(9) of the Finance Act 1984 as an additional premium.

542 Life annuity contracts: chargeable events

(1) Subject to subsections (2) and (3) below, in this Chapter “chargeable event” means, in relation to any contract for a life annuity—

- (a) the surrender in whole of the rights conferred by the contract, or
- (b) the assignment for money or money’s worth of those rights, or
- (c) an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section) except, if it ends with another chargeable event, the final year.

(2) Where the terms of a contract provide for the payment of a capital sum as an alternative, in whole or in part, to payments by way of annuity, the taking of the capital sum shall be treated for the purposes of this section and section 543 as a surrender in whole or in part of the rights conferred by the contract, and where the terms of the contract provide for the payment of a capital sum on death and the contract was made on or after 10th December 1974, the death shall be treated for those purposes as a surrender in whole of the rights conferred by the contract.

(3) Except as provided by section 544, an event referred to in subsection (1) above is not a chargeable event in relation to any contract made before 26th June 1982 if the rights conferred by the contract have at any time before that date and before the event been assigned for money or money’s worth and are not at the time of the event held by the original beneficial owner.

(4) Subsection (4) of section 540 shall, with any necessary modifications, apply for the purposes of this section as it applies for the purposes of that section.

543 Life annuity contracts: computation of gain

(1) On the happening of a chargeable event in relation to any contract for a life annuity, there shall be treated as a gain arising in connection with the contract—

- (a) if the event is the surrender in whole of the rights conferred by the contract, the excess (if any) of the amount payable by reason of the event plus the amount or value of any relevant capital payments over the sum of the following—
 - (i) the total amount previously paid under the contract, whether by way of premiums or as lump sum consideration, reduced, if before the happening of the event one or more payments have been made on account of the annuity, by the capital element in that payment or payments, as determined in accordance with section 656; and
 - (ii) the total amount treated as a gain by virtue of paragraph (c) below on the previous happening of chargeable events;
 - (b) if the event is an assignment, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments or of any previously assigned share in the rights conferred by the contract, over the sum of the following—
 - (i) the amount specified in paragraph (a)(i) above; and
 - (ii) any amount treated as a gain by virtue of paragraph (c) below on the previous happenings of chargeable events;
 - (c) if the event is the occurrence of such an excess as is mentioned in section 542(1), the amount of the excess.
- (2) Subsection (3) of section 541 shall apply for the purposes of subsection (1) above as it applies for the purposes of subsection (1)(c) of that section, and subsection (4) of that section shall apply for the purposes of this section with the substitution of references to the contract for references to the policy.
- (3) In this section “relevant capital payments” means, in relation to any contract, any sum or other benefit of a capital nature paid or conferred under the contract before the happening of the chargeable event.

544 Second and subsequent assignment of life policies and contracts

- (1) In this section “assigned policy” means a policy of life assurance—
- (a) which was issued in respect of an insurance made before 26th June 1982; and
 - (b) the rights conferred by which have been assigned for money or money’s worth before that date; and
 - (c) in relation to which an event occurring on or after that date would not, apart from this section, be a chargeable event.
- (2) In this section “assigned contract” means a contract for a life annuity—
- (a) which was made before 26th June 1982; and
 - (b) the rights conferred by which have been assigned for money or money’s worth before that date; and
 - (c) in relation to which an event occurring on or after that date would not, apart from this section, be a chargeable event.
- (3) In any case where after 23rd August 1982—
- (a) the rights conferred by an assigned policy or, as the case may be, an assigned contract are again assigned for money or money’s worth; or
 - (b) a payment is made by way of premium or as lump sum consideration under the policy or contract; or

- (c) subject to subsections (5) and (7) below, a sum is lent by or by arrangement with the body issuing the policy or, as the case may be, the body with which the contract was made;
- section 540(3) shall cease to apply to the policy or section 542(3) shall cease to apply to the contract, as the case may be.
- (4) No account shall be taken for the purposes of subsection (3)(a) above of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights concerned, or of an assignment between spouses living together.
- (5) Subsection (3)(c) above does not apply unless—
- (a) the policy was issued in respect of an insurance made after 26th March 1974 or, as the case may be, the contract was entered into after that date; and
 - (b) the sum concerned is lent to or at the direction of the individual who, in accordance with subsection (6) below, is at the time of the loan the chargeable individual.
- (6) The individual who is at any time the chargeable individual for the purposes of subsection (5)(b) above shall be determined as follows—
- (a) if at the time the rights conferred by the policy or contract are vested in an individual as beneficial owner or are held on trusts created by an individual (including such trusts as are referred to in section 547(1)(a)), that individual is the chargeable individual; and
 - (b) if at that time those rights are held as security for a debt owed by an individual, that individual is the chargeable individual.
- (7) Subsection (3)(c) above does not apply in relation to a policy if—
- (a) it is a qualifying policy; and
 - (b) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling-house to be used as his only or main residence.
- (8) Where section 540(3) or 542(3) ceases to apply to an assigned policy or assigned contract by virtue of paragraph (c) of subsection (3) above, the lending of the sum concerned shall be regarded for the purposes of the Income Tax Acts (other than that paragraph) as taking place immediately after the time at which section 540(3) or, as the case may be, 542(3) ceases so to apply.

545 Capital redemption policies

- (1) Subject to subsection (2) below, in this Chapter “chargeable event” means, in relation to a capital redemption policy, any of the following—
- (a) the maturity of the policy, except where the sums payable on maturity are annual payments chargeable to tax under Schedule D;
 - (b) the surrender in whole of the rights conferred by the policy;
 - (c) the assignment for money or money’s worth of those rights; and
 - (d) an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section), except, if it ends with another chargeable event, the final year.

- (2) Subsection (4) of section 540 shall apply for the purposes of this section as it applies for purposes of that section.
- (3) The provisions of section 541, except subsection (3), shall, so far as appropriate and subject to subsection (4) below, apply to capital redemption policies as they apply to policies of life assurance.
- (4) Where a chargeable event happens in relation to a capital redemption policy which has previously been assigned for money or money's worth, section 541 shall have effect in relation thereto as if, for the references to the total amount previously paid under the policy by way of premiums, there were substituted references to the amount or value of the consideration given for the last such assignment, plus the total amount of the premiums paid under the policy since that assignment.

546 Calculation of certain amounts for purposes of sections 540, 542 and 545

- (1) For the purposes of sections 540, 542 and 545, there shall be calculated as at the end of each year—
 - (a) the value, as at the time of surrender or assignment, of any part of or share in the rights conferred by the policy or contract which has been assigned or surrendered during the period ending with the end of that year and beginning with the commencement of the first year which falls wholly after 13th March 1975; and
 - (b) the appropriate portion of any payment made up to the end of that period by way of premium or as a lump sum consideration;

and the appropriate portion of any payment shall be one-twentieth for the year in which it is made, increased by a further one-twentieth for each of the subsequent years, up to a maximum of nineteen, but excluding therefrom any such one-twentieth for any year before that first year.
- (2) The reckonable aggregate value referred to in those sections shall be—
 - (a) the sum of the values calculated under subsection (1) above; less
 - (b) the sum of the values so calculated for a previous year and brought into account on the previous happening of a chargeable event.
- (3) The allowable aggregate amount referred to in those sections shall be—
 - (a) the aggregate of the appropriate portions calculated under subsection (1) above;

less

 - (b) the aggregate of the appropriate portions so calculated for a previous year and brought into account on the previous happening of a chargeable event.
- (4) In this section “year” means the 12 months beginning with the making of the insurance or contract and any subsequent period of 12 months; except that—
 - (a) death, the maturity of the policy or the surrender of the rights conferred by the policy or contract shall be treated as ending the final year; and
 - (b) if the final year would by virtue of paragraph (a) above begin and end in the same year of assessment, the final year and the year preceding it shall together be one year.
- (5) There shall be disregarded for the purposes of this section any amount which was treated under section 72(9) of the Finance Act 1984 as an additional premium.

547 Method of charging gain to tax

- (1) Where under section 541, 543 or 545 a gain is to be treated as arising in connection with any policy or contract—
 - (a) if, immediately before the happening of the chargeable event in question, the rights conferred by the policy or contract were vested in an individual as beneficial owner, or were held on trusts created by an individual (including trusts arising under section 11 of the Married Women's Property Act 1882, section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 or section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964 or as security for a debt owed by an individual, the amount of the gain shall be deemed to form part of that individual's total income for the year in which the event happened;
 - (b) if, immediately before the happening of that event, those rights were in the beneficial ownership of a close company, or were held on trusts created, or as security for a debt owed, by a close company, then, for the purposes of Chapter III of Part XI—
 - (i) the amount of the gain shall be deemed to form part of the company's income for the accounting period in which the event happened, and
 - (ii) the company's distributable income (but not its estate or trading income) for that period shall be treated as increased by the amount of the gain;
 - (c) if, immediately before the happening of that event, those rights were vested in personal representatives, within the meaning of Part XVI, the amount of the gain shall be deemed for the purposes of that Part to be part of the aggregate income of the estate of the deceased.
- (2) Nothing in subsection (1) above shall apply to any amount which is chargeable to tax apart from that subsection.
- (3) Where, immediately before the happening of a chargeable event, the rights conferred by any policy or contract were vested beneficially in two or more persons, or were held on trusts created, or as security for a debt owed, by two or more persons, subsection (1) (a) and (b) above shall have effect in relation to each of those persons as if he had been the sole owner, settlor or debtor, but with references to the amount of the gain construed as references to the part of it proportionate to his share in the rights at the time of the event or, as the case may require, when the trusts were created.
- (4) References in subsections (1) and (3) above to the rights conferred by a policy or contract are, in the case of an assignment of a share only in any rights, references to that share.
- (5) Subject to subsections (6) and (7) below and section 550, where by virtue of subsection (1) above, a sum is included in an individual's total income—
 - (a) no assessment shall be made on him in respect of income tax at the basic rate on that sum but he shall be treated as having paid income tax at the basic rate on that sum or, if his total income is reduced by any deductions, on so much of that sum as is part of his total income as so reduced;
 - (b) no repayment shall be made of the income tax treated by virtue of paragraph (a) above as having been paid; and
 - (c) the sum so included shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

- (6) Where under section 543 a gain is to be treated as arising in connection with a contract for a life annuity made after 26th March 1974—
- (a) this section shall have effect, in relation to the gain, as if subsection (5) were omitted; and
 - (b) the gain shall be chargeable to tax under Case VI of Schedule D; but
 - (c) any relief under section 550 shall be computed as if this subsection had not been enacted.
- (7) Where under section 541 or 543 a gain is to be treated as arising in connection with a policy issued by a friendly society in the course of tax exempt life or endowment business, this section shall have effect in relation to the gain as if subsection (5) were omitted, but any relief under section 550 shall be computed as if this subsection had not been enacted.

548 Deemed surrender of certain loans

- (1) Where—
- (a) under section 547 a gain arising in connection with a policy or contract would be treated as forming part of an individual's total income; and
 - (b) the policy was issued in respect of an insurance made after 26th March 1974 or the contract was made after that date; and
 - (c) any sum is at any time after the making of the insurance or contract lent to or at the direction of that individual by or by arrangement with the body issuing the policy or, as the case may be, the body with which the contract was made;
- then, subject to subsection (3) below, the same results shall follow under this Chapter as if at the time the sum was lent there had been a surrender of part of the rights conferred by the policy or contract and the sum had been paid as consideration for the surrender.
- (2) If the whole or any part of the sum is repaid the repayment shall be treated, for the purpose of computing any gain arising on the happening, at the end of the final year, of a chargeable event, as a payment of a premium or lump sum consideration.
- (3) Subsections (1) and (2) above do not apply in relation—
- (a) to a policy if—
 - (i) it is a qualifying policy; and
 - (ii) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling used or to be used as his only or main residence;
 - (b) to a contract if and to the extent that interest on the sum lent is eligible for relief under section 353 by virtue of section 365.
- (4) In this section “final year” has the same meaning as in section 546.

549 Certain deficiencies allowable as deductions

- (1) Subject to subsection (2) below, where such an excess as is mentioned in section 541(1) (a) or (b) or 543(1)(a)—
- (a) would be treated as a gain arising in connection with a policy or contract, and

- (b) would form part of an individual's total income for the year of assessment in which the final year ends,
- a corresponding deficiency occurring at the end of the final year shall be allowable as a deduction from his total income for that year of assessment, so far as it does not exceed the total amount treated as a gain by virtue of section 541(1)(d) or 543(1)(c) on the previous happenings of chargeable events.
- (2) Except where the deficiency mentioned in subsection (1) above occurs in connection with a contract for a life annuity made after 26th March 1974, the deduction allowable under that subsection shall be made only for the purposes of ascertaining the individual's excess liability, that is to say, the excess (if any) of his liability to income tax over what it would be if all income tax were chargeable at the basic rate to the exclusion of any higher rate.
- (3) In this section "final year" has the same meaning as in section 546.

550 Relief where gain charged at a higher rate

- (1) The following provisions of this section shall have effect for the purposes of giving relief, on a claim in that behalf being made by him to the Board, in respect of any increase in an individual's liability to tax which is attributable to one or more amounts being included in his total income for a year of assessment by virtue of section 547(1) (a).
- (2) Where one amount only is so included, there shall be computed—
- (a) the tax which would be chargeable in respect of the amount if relief under this section were not available and it constituted the highest part of the claimant's total income for the year, and
- (b) the tax (if any) which would be chargeable in respect of the amount if calculated, in accordance with subsection (3) below, by reference to its appropriate fraction;
- and the relief shall consist of a reduction or repayment of tax equal to the difference between the two amounts of tax so computed, or, if tax would not be chargeable on a calculation by reference to the appropriate fraction, of a reduction or repayment of the tax equal to the tax computed under paragraph (a) above.
- (3) In subsection (2) above "appropriate fraction" means, in relation to any amount, such a sum as bears thereto the same proportion as that borne by one to the number of complete years for which the policy or contract has run before the happening of the chargeable event; and the computation required by paragraph (b) of that subsection shall be made by applying to the amount in question such rate or rates of income tax, other than the basic rate, as would apply if it were reduced to that fraction and, as so reduced, still constituted the highest part of the claimant's total income for the year.
- (4) For the purposes of subsection (3) above the number of years for which a policy of life insurance has run before the happening of a chargeable event shall be calculated, where appropriate, from the issue of the earliest related policy, meaning, any policy in relation to which the policy is a new policy within the meaning of paragraph 17 of Schedule 15, any policy in relation to which that policy is such a policy, and so on.
- (5) Where a chargeable event on the happening of which an amount is included in an individual's total income by virtue of section 547(1)(a) follows the happening of another chargeable event in relation to the same policy or contract, and each of those events is such an excess as is mentioned in section 540(1)(a)(v), 542(1) or 545(1)(d),

subsections (3) and (4) above shall have effect in relation to that amount as if the number of complete years referred to in subsection (3) were the number of complete years elapsing between that other event (or, if more than one, the last of them) and the first-mentioned event.

- (6) Where by virtue of section 547(1)(a) two or more amounts are included in an individual's total income for any year of assessment, subsections (2) and (3) above shall apply as if they together constituted a single amount, but with the appropriate fraction of the whole determined by adding together the appropriate fractions of the individual amounts.
- (7) A provision of this section requiring tax to be calculated as if an amount constituted the highest part of a claimant's total income shall apply notwithstanding any other provision of the Income Tax Acts directing any other amount to be treated as the highest part thereof, but, for the purposes of this section, a claimant's total income shall be deemed not to include any amount in respect of which he is chargeable to tax under section 34, 35, 36 or 148.

551 Right of individual to recover tax from trustees

- (1) Where—
- (a) an amount is included in an individual's income by virtue of section 547(1)(a), and
 - (b) the rights or share in question were held immediately before the happening of the chargeable event on trust,

the individual shall be entitled to recover from the trustees, to the extent of any sums, or to the value of any benefits, received by them by reason of the event, an amount equal to that (if any) by which the tax with which he is chargeable for the year of assessment in question, reduced by the amount of any relief available under section 550 in respect of the amount so included, exceeds the tax with which he would have been chargeable for the year if that amount had not been so included.

- (2) Where, for the purposes of relief under section 550, two or more amounts are to be treated as one, the reduction required by subsection (1) above on account of the relief available in respect of any of them shall consist of a proportionate part of the relief available in respect of their aggregate.
- (3) An individual may require the Board to certify any amount recoverable by him by virtue of this section, and the certificate shall be conclusive evidence of the amount.

552 Information: duty of insurers

- (1) Subject to subsections (2) to (5) below, where a chargeable event within the meaning of this Chapter has happened in relation to any policy or contract, the body by or with whom the policy or contract was issued, entered into or effected shall, within three months of the event or, if it is a death or an assignment, within three months of their receiving written notification thereof, deliver to the inspector a certificate specifying—
- (a) the name and address of the policy holder;
 - (b) the nature of the event, and the date on which it happened;
 - (c) as may be required for computing the gain to be treated as arising by virtue of this Chapter—
 - (i) the surrender value of the policy, or the sum payable, or other benefits to be conferred, by the body in question by reason of the event;

- (ii) the amount or value of any relevant capital payments;
 - (iii) the amounts previously paid under the policy or contract by way of premiums, or otherwise by way of consideration for an annuity; and
 - (iv) the capital element in any payment previously made on account of an annuity;
- (d) the number of years relevant for computing the appropriate fraction of the gain for the purposes of section 550(3).
- (2) Subsection (1) above shall not apply where—
- (a) the body in question are satisfied that no gain is to be treated as arising by reason of the event, or
 - (b) the amount of the surrender value or sum, or the value of the other benefits, referred to in paragraph (c)(i) of that subsection, together with the amount or value of any payments within paragraph (c)(ii) of that subsection, does not exceed £500,
- but the inspector may by notice require a like certificate in any such case, and it shall be the duty of the body to deliver the certificate within 30 days of receipt of the notice.
- (3) Where the chargeable event is an assignment of all the rights conferred by the policy or contract the certificate shall also specify any such excess as is mentioned in section 540(1)(a)(v), 542(1) or 545(1)(d) which has occurred since the relevant date, the date on which it occurred and the value of the part of or share in the rights which have been surrendered or assigned since the relevant date.
- (4) Where the chargeable event is the occurrence of such an excess as is mentioned in section 540(1)(a)(v), 542(1) or 545(1)(d), subsections (1) and (2) above shall apply with the omission of paragraph (b) of subsection (2) and the certificate shall also specify the value of the part of or share in the rights surrendered or assigned in any year since the relevant date and the amounts paid by way of premiums in any year since the relevant date.
- (5) In subsections (3) and (4) above—
- “year” has the same meaning as in section 546(4); and
 - “the relevant date”, in relation to any certificate, means the date of the chargeable event in respect of which the last certificate under this section was delivered or, if none was delivered, the commencement of the policy or contract.

553 Non-resident policies and off-shore capital redemption policies

- (1) If, in the case of a substitution of policies falling within paragraph 25(1) or (3) of Schedule 15, the new policy is a qualifying policy, section 540 shall have effect with the following modifications—
- (a) the surrender of the rights conferred by the old policy shall not be a chargeable event (within the meaning of that section); and
 - (b) the new policy shall be treated as having been issued in respect of an insurance made on the day referred to in paragraph 26 of that Schedule.
- (2) If at any time neither the conditions in sub-paragraph (3) nor those in sub-paragraph (4) of paragraph 24 of Schedule 15 are fulfilled with respect to a new non-resident policy which has previously become a qualifying policy, then, from that time onwards, this Chapter shall apply in relation to the policy as if it were not a qualifying policy.

Status: This is the original version (as it was originally enacted).

- (3) Subject to subsection (5) below, on the happening of a chargeable event in relation to a new non-resident policy or a new offshore capital redemption policy, the amount which, apart from this subsection, would by virtue of section 541 be treated as a gain arising in connection with the policy shall be reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the number of days on which the policy holder was resident in the United Kingdom in the period for which the policy has run before the happening of the chargeable event; and

B is the number of days in that period.

- (4) The calculation of the number of days in the period referred to in subsection (3) above shall be made in like manner as is provided in section 550(4), substituting a reference to the number of days for the reference to the number of years.
- (5) If, on the happening of the chargeable event referred to in subsection (3) above or at any time during the period referred to in that subsection, the policy is or was held by a trustee resident outside the United Kingdom or by two or more trustees any of whom is or was so resident, no reduction shall be made under that subsection unless—
- (a) the policy was issued in respect of an insurance made on or before 19th March 1985; and
 - (b) on that date the policy was held by a trustee who was so resident or, as the case may be, by two or more trustees any of whom was so resident.
- (6) Subject to subsection (7) below, where, under section 541, a gain (reduced in accordance with subsection (3) above) is to be treated as arising in connection with a new non-resident policy or a new offshore capital redemption policy—
- (a) section 547 shall have effect, in relation to the gain, as if subsection (5) were omitted; and
 - (b) the gain shall be chargeable to tax under Case VI of Schedule D;
- but any relief under section 550 shall be computed as if this subsection had not been enacted.
- (7) Paragraphs (a) and (b) of subsection (6) above do not apply to a gain arising in connection with a new non-resident policy if the conditions in either sub-paragraph (3) or sub-paragraph (4) of paragraph 24 of Schedule 15 are fulfilled at all times between the date on which the policy was issued and the date on which the gain is treated as arising.
- (8) Where a claim is made under section 550 in respect of the amount of a gain treated as arising in connection with a new non-resident policy or a new offshore capital redemption policy (with or without other amounts), the “appropriate fraction” which, in accordance with subsection (2) of that section, is to be applied to that amount shall be modified by deducting from the number of complete years referred to in subsection (3) of that section any complete years during which the policy holder was not resident in the United Kingdom.
- (9) Subsection (5) of section 550 shall not apply in relation to a new non-resident policy or a new offshore capital redemption policy.

(10) In this section—

“chargeable event” has, subject to subsection (1) above, the meaning given by section 540 or, as the case may be, 545;

“new non-resident policy” has the meaning given by paragraph 24 of Schedule 15; and

“new offshore capital redemption policy” means a capital redemption policy, as defined in section 539(3), which—

- (a) is issued in respect of an insurance made after 22nd February 1984; and
- (b) is so issued by a company resident outside the United Kingdom.

554 Borrowings on life policies to be treated as income in certain cases

(1) Where—

- (a) under any contract or arrangements made on or after 7th April 1949, provision is made for the making to any person, at intervals until the happening of an event or contingency dependent on human life, of payments by way of loan; and
- (b) under the contract or arrangements, the loans are secured upon a policy of life assurance which assures moneys payable on the happening of such an event or contingency and need not be repaid until the policy moneys become payable; and
- (c) the amount of the moneys payable on the happening of the event or contingency is made by the policy to increase by reference to the length of a period ending on the happening of that event or contingency;

the payments made by way of loan shall be treated for tax purposes as annual payments falling within Case III of Schedule D, or, if they are made to a person residing in the United Kingdom and the contract or arrangements were made outside the United Kingdom, as income from a possession out of the United Kingdom and, for income tax, as falling within section 65(1).

- (2) The amount of the moneys payable under a policy of life assurance shall not be deemed for the purposes of this section to be made to increase by reference to the length of a period ending on the happening of an event or contingency dependent on human life by reason only that those moneys are to increase from time to time if profits are made by the person liable under the policy.
- (3) This section shall not apply to any payments by way of loan if the Board are satisfied as respects those payments that it is not one of the objects of the contract or arrangements under which the payments are made that the recipient of them should enjoy the advantages which would, apart from any question of liability to tax, be enjoyed by a person in receipt of payments of the same amounts paid at the same times by way of annuity.

Status: This is the original version (as it was originally enacted).

CHAPTER III

ENTERTAINERS AND SPORTSMEN

555 Payment of tax

- (1) Where a person who is an entertainer or sportsman of a prescribed description performs an activity of a prescribed description in the United Kingdom (“a relevant activity”), this Chapter shall apply if he is not resident in the United Kingdom in the year of assessment in which the relevant activity is performed.
- (2) Where a payment is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall on making it deduct out of it a sum representing income tax and shall account to the Board for the sum.
- (3) Where a transfer is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall account to the Board for a sum representing income tax.
- (4) The sums mentioned in subsections (2) and (3) above shall be such as are calculated in accordance with prescribed rules but shall in no case exceed the relevant proportion of the payment concerned or of the value of what is transferred, as the case may be; and “relevant proportion” here means a proportion equal to the basic rate of income tax for the year of assessment in which the payment or, as the case may be, the transfer is made.
- (5) In this Chapter—
 - (a) references to a payment include references to a payment by way of loan of money; and
 - (b) references to a transfer do not include references to a transfer of money but, subject to that, include references to a temporary transfer (as by way of loan) and to a transfer of a right (whether or not a right to receive money).
- (6) This section shall not apply to payments or transfers of such a kind as may be prescribed.
- (7) Regulations may—
 - (a) make provision enabling the Board to serve notices requiring persons who make payments or transfers to which subsection (2) or (3) above applies to furnish to the Board particulars of a prescribed kind in respect of payments or transfers;
 - (b) make provision requiring persons who make payments or transfers to which subsection (2) or (3) above applies to make, at prescribed times and for prescribed periods, returns to the Board containing prescribed information about payments or transfers and the income tax for which those persons are accountable in respect of them;
 - (c) make provision for the collection and recovery of such income tax, provision for assessments and claims to be made in respect of it, and provision for the payment of interest on it;
 - (d) adapt, or modify the effect of, any enactment relating to income tax for the purpose of making any such provision as is mentioned in paragraphs (a) to (c) above.

Status: This is the original version (as it was originally enacted).

- (8) Where in accordance with subsections (2) to (7) above a person pays a sum to the Board, they shall treat it as having been paid on account of a liability of another person to income tax or corporation tax; and the liability and the other person shall be such as are found in accordance with prescribed rules.
- (9) Where the sum exceeds the liability concerned, the Board shall pay such of the sum as is appropriate to the other person mentioned in subsection (8) above.
- (10) Where no liability is found as mentioned in subsection (8) above, the Board shall pay the sum to the person to whom the payment or transfer to which subsection (2) or (3) above applies, and which gave rise to the payment of the sum concerned to the Board, was made.
- (11) In construing references to a sum in subsections (8) to (10) above, anything representing interest shall be ignored.

556 Activity treated as trade etc. and attribution of income

- (1) Where a payment is made (to whatever person) and it has a connection of the prescribed kind with the relevant activity, the activity shall be treated for the purposes of the Tax Acts as performed in the course of a trade, profession or vocation exercised by the entertainer or sportsman within the United Kingdom, to the extent that (apart from this subsection) it would not be so treated.

This subsection shall not apply where the relevant activity is performed in the course of an office or employment.

- (2) Where a payment is made to a person who fulfils a prescribed description but is not the entertainer or sportsman and the payment has a connection of the prescribed kind with the relevant activity—
 - (a) the entertainer or sportsman shall be treated for the purposes of the Tax Acts as the person to whom the payment is made; and
 - (b) the payment shall be treated for those purposes as made to him in the course of a trade, profession or vocation exercised by him within the United Kingdom (whether or not he would be treated as exercising such a trade, profession or vocation apart from this paragraph).
- (3) Regulations may provide—
 - (a) for the deduction, in computing any profits or gains of the entertainer or sportsman arising from the payment, of expenses incurred by other persons in relation to the payment;
 - (b) that any liability to tax (whether of the entertainer or sportsman or of another person) which would, apart from subsection (2) above, arise in relation to the payment shall not arise or shall arise only to a prescribed extent.
- (4) References in this section to a payment include references to a transfer.
- (5) This section shall not apply unless the payment or transfer is one to which section 555(2) or (3) applies, and subsections (2) and (3) above shall not apply in such circumstances as may be prescribed.

Status: This is the original version (as it was originally enacted).

557 Charge on profits or gains

- (1) Where income tax is chargeable under Case I or II of Schedule D on the profits or gains arising from payment (made to whatever person) and the payments have a connection of the prescribed kind with relevant activities of the entertainer or sportsman, such tax shall be charged—
 - (a) as if those payments were received in the course of one trade, profession or vocation exercised by the entertainer or sportsman within the United Kingdom separately from any other trade, profession or vocation exercised by him; and
 - (b) for each year of assessment, on the full amount of the profits or gains arising in the year from those payments.
- (2) Regulations may—
 - (a) provide for the apportionment of profits or gains between different trades, professions or vocations of the entertainer or sportsman;
 - (b) provide for the apportionment between different years of assessment of the profits or gains arising from relevant activities of the entertainer or sportsman;
 - (c) provide for losses sustained in any trade, profession or vocation of the entertainer or sportsman to be deducted from or set off against the profits or gains of another trade, profession or vocation of the entertainer or sportsman;
 - (d) provide that prescribed provisions of the Tax Acts about losses, or about expenditure, shall not apply (or shall apply with prescribed modifications) in prescribed circumstances relating to the entertainer or sportsman.
- (3) References in subsection (2)(a) and (c) above to a trade, profession or vocation of the entertainer or sportsman include references to that first mentioned in subsection (1)(a) above as well as to any other exercised by him.
- (4) References in this section to a payment include references to a transfer.
- (5) This section shall not apply in the case of a payment or transfer unless it is one to which section 555(2) or (3) applies.

558 Supplementary provisions

- (1) A payment to which subsection (2) of section 555 applies shall be treated for the purposes of the Tax Acts as not diminished by the sum mentioned in that subsection.
- (2) Regulations may provide that for the purposes of the Tax Acts the value of what is transferred by a transfer to which section 555(3) applies shall be calculated in accordance with prescribed rules.
- (3) In particular, rules may include provision for the calculation of an amount representing the actual worth of what is transferred, for that amount to be treated as a net amount corresponding to a gross amount from which income tax at the basic rate has been deducted, and for the gross amount to be taken to be the value of what is transferred.
- (4) No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an authorised officer of the Board from disclosing to any person who appears to the Board to have an interest in the matter information which may be relevant to determining whether section 555(2) or (3) applies to a payment or transfer.
- (5) Regulations may make provision generally for giving effect to this Chapter, and may make different provision for different cases or descriptions of case.

- (6) In this Chapter—
“regulations” means regulations made by the Treasury; and
“prescribed” means prescribed by regulations.

CHAPTER IV

SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY

559 Deductions on account of tax etc. from payments to certain sub-contractors

- (1) Subject to subsection (2) below, where a contract relating to construction operations is not a contract of employment but—
- (a) one party to the contract is a sub-contractor; and
 - (b) another party to the contract (“the contractor”) either is a sub-contractor under another such contract relating to all or any of the construction operations or is a person to whom section 560(2) applies,
- this section shall apply to any payments which are made under the contract and are so made by the contractor to—
- (i) the sub-contractor;
 - (ii) a person nominated by the sub-contractor or the contractor; or
 - (iii) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.
- (2) Subsection (1) above shall not apply to any payment made under the contract in question if the person to whom it is made or, if it is made to a nominee, each of the following persons, that is to say, the nominee, the person who nominated him and the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made, is excepted from this section in relation to those payments by virtue of section 561.
- (3) Subsection (2) above does not apply to so much of any payment made under the contract in question to a person falling within subsection (4) of section 561 as exceeds, or in aggregate with other payments specified in regulations made under subsection (5) of that section exceeds, the limit prescribed by those regulations.
- (4) On making a payment to which this section applies the contractor shall deduct from it a sum equal to 27 per cent. of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates; and the sum so deducted shall be paid to the Board and shall be treated for the purposes of income tax or, as the case may be, corporation tax—
- (a) as not diminishing the payment; but
 - (b) subject to subsection (5) below, as being income tax or, as the case may be, corporation tax paid in respect of the profits or gains of the trade, profession or vocation of the person for whose (or for whose employees' or officers') labour the contractor makes the payment.
- (5) Where a sum deducted and paid to the Board under subsection (4) above is more than sufficient to discharge the liability to income tax of the person referred to in paragraph (b) of that subsection in respect of the profits or gains mentioned in that paragraph, so much of the excess as is required to discharge any liability of that person

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for Class 4 contributions shall be treated as being, for the purposes of the Social Security Act, Class 4 contributions paid in respect of the profits or gains so mentioned.

- (6) References in section 1(1) of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964 to sums due on account of tax deductions for any period shall be construed as including references to any amounts due from any person in respect of deductions required to be made by him under this section.
- (7) For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations shall be taken to be made under the contract; and if—
- (a) the obligation is to make a payment to a person within subsection (1)(i) to (iii) above, but
 - (b) the payment discharging that obligation is made to a person not within those paragraphs,
- the payment shall for those purposes be taken to be made to the first-mentioned person.
- (8) In this section—
- “Class 4 contributions” means Class 4 contributions within the meaning of the Social Security Act 1975 or, as the case may be, the Social Security (Northern Ireland) Act 1975; and
- “the Social Security Act” means whichever of those Acts is the one under which the contribution in question is payable.

560 Persons who are sub-contractors or contractors for purposes of Chapter IV

- (1) For the purposes of this Chapter a party to a contract relating to construction operations is a sub-contractor if, under the contract—
- (a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (that is to say, in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or
 - (b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.
- (2) This subsection applies to the following persons, that is to say—
- (a) any person carrying on a business which includes construction operations;
 - (b) any local authority;
 - (c) any development corporation or new town commission;
 - (d) the Commission for the New Towns;
 - (e) the Housing Corporation, a housing association, a housing trust, the Scottish Special Housing Association, and the Northern Ireland Housing Executive;
 - (f) a person carrying on a business at any time if—
 - (i) his average annual expenditure on construction operations in the period of three years ending with the end of the last period of account before that time exceeds £250,000, or
 - (ii) where he was not carrying on the business at the beginning of that period of three years, one-third of his total expenditure on

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construction operations for the part of that period during which he has been carrying on the business exceeds £250,000;

and in paragraph (f) “period of account” means a period for which an account is made up in relation to the business in question.

- (3) Where section 559(1)(b) begins to apply to any person in any period of account by virtue of his falling within subsection (2)(f) above, it shall continue to apply to him until he satisfies the Board that his expenditure on construction operations has been less than £250,000 in each of three successive years beginning in or after that period of account.
- (4) Where the whole or part of a trade is transferred by a company (“the transferor”) to another company (“the transferee”) and section 343 has effect in relation to the transfer, then in determining for the purposes of this section the amount of expenditure incurred by the transferee—
 - (a) the whole or, as the case may be, a proportionate part of any expenditure incurred by the transferor at a time before the transfer shall be treated as if it had been incurred at that time by the transferee; and
 - (b) where only a part of the trade is transferred the expenditure shall be apportioned in such manner as appears to the Board, or on appeal to the Commissioners, to be just and reasonable.
- (5) In this section—
 - “development corporation” has the same meaning as in the New Towns Act 1981 or the New Towns (Scotland) Act 1968;
 - “housing association” has the same meaning as in the Housing Associations Act 1985 or the Housing (Northern Ireland) Order 1981;
 - “housing trust” has the same meaning as in the Housing Associations Act 1985; and
 - “new town commission” has the same meaning as in the New Towns Act (Northern Ireland) 1965.

561 Exceptions from section 559

- (1) Subject to the provisions of regulations under subsection (5) below or section 566(2), a person is excepted from section 559 in relation to payments made under a contract if a certificate under this section has been issued to that person and is in force when the payment is made, but—
 - (a) where the certificate has been issued to a person who becomes a partner in a firm, that person is not excepted in relation to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor; and
 - (b) where a certificate has been issued to a person as a partner in a firm, that person is excepted in relation only to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm, is a sub-contractor.
- (2) If the Board are satisfied, on the application of an individual or a company, that—
 - (a) where the application is for the issue of a certificate to an individual (otherwise than as a partner in a firm), he satisfies the conditions set out in section 562;
 - (b) where the application is for the issue of a certificate to a person as a partner in a firm, that person satisfies the conditions set out in section 563 if he is an

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individual or, if a company, the conditions set out in section 565 and, in either case, the firm itself satisfies the conditions set out in section 564;

- (c) where the application is for the issue of a certificate to a company, the company satisfies the conditions set out in section 565 and, if the Board have given a direction under subsection (4) below, each of the persons to whom any of the conditions set out in section 562 applies in accordance with the direction satisfies the conditions which so apply to him,

the Board shall issue to that individual or company a certificate excepting that individual or company (or, in a case falling within paragraph (b) above, that individual or company as a partner in the firm specified in the certificate) from section 559.

- (3) References in subsection (2) above to an individual, a company or a firm satisfying conditions set out in section 562, 563, 564 or 565 include, in relation to a condition which may, by virtue of a provision of that section, be treated as being satisfied, references to that individual, company or firm being treated as satisfying that condition.
- (4) This subsection applies to the holder of a certificate in force under this section if it was issued to him on the basis—
- (a) that the condition in subsection (3) of section 562 was inapplicable to him by reason of paragraph (b) of that subsection; or
- (b) that he satisfied that condition by virtue of subsection (7) of that section.
- (5) The Board may make regulations securing that a person to whom subsection (4) above applies shall not be excepted from subsection (1) above in relation to a payment to the extent that the amount of the payment, or the aggregate amount of the payment and such other payments as may be prescribed by the regulations, exceeds a limit so prescribed.
- (6) Where it appears to the Board, on an application made under subsection (2) above by a company, that the company—
- (a) was incorporated on a date within the period of three years ending with the date of the application; or
- (b) has not carried on business continuously throughout that period; or
- (c) has carried on business continuously throughout that period but the business has not at all times in that period consisted of or included the carrying out of construction operations; or
- (d) does not at the date of the application hold a certificate which is then in force under this section;

the Board may direct that the conditions set out in section 562 or such of them as are specified in the direction shall apply to the directors of the company and, if the company is a close company, to the persons who are the beneficial owners of shares in the company or to such of those directors or persons as are so specified as if each of them were an applicant for a certificate under this section (not being a certificate to the holder of which section 561(4) would apply).

In this subsection “director” has the same meaning as in Chapter II of Part V.

- (7) Where it appears to the Board that there has been a change in the control of a company holding or applying for a certificate, the Board may make any such direction as is referred to in subsection (6) above.

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- (8) The Board may at any time cancel a certificate which has been issued to a person and is in force under this section if it appears to them that—
- (a) it was issued on information which was false;
 - (b) if an application for the issue of a certificate under this section to that person were made at that time, the Board would refuse to issue a certificate;
 - (c) that person has permitted the certificate to be misused; or
 - (d) in the case of a certificate issued to a company, there has been a change in the control of the company and information with respect to that change has not been furnished in accordance with regulations under section 566(2);

and may by notice require that person to deliver the certificate to the Board within the time specified in the notice.

Section 840 shall apply for the purposes of paragraph (d) above.

- (9) A person aggrieved by the refusal of an application for a certificate under this section or the cancellation of such a certificate may, by notice given to the Board within 30 days after the refusal or, as the case may be, cancellation, appeal to the General Commissioners or, if he so elects in the notice, to the Special Commissioners; and the jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under this section.

- (10) If any person, for the purpose of obtaining a certificate under this section—
- (a) makes any statement, or furnishes any document, which he knows to be false in a material particular; or
 - (b) recklessly makes any statement, or furnishes any document, which is false in a material particular,

he shall be liable on summary conviction to a fine not exceeding £5,000.

- (11) A person to whom a certificate is issued under this section or a voucher is given as required by regulations under section 566(2)(j) shall take all reasonable steps to ensure its safety; and any person who, without lawful authority or lawful excuse—
- (a) disposes of any such certificate or voucher or any form supplied by the Board in connection with regulations made by virtue of section 566(2)(e); or
 - (b) possesses such a certificate, voucher or form or any document purporting to be such a certificate, voucher or form,

shall be liable on summary conviction to a fine not exceeding £5,000.

- (12) Notwithstanding any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence under subsection (10) or (11) above may be commenced at any time within three years from the commission of the offence.

- (13) Without prejudice to section 843(3), this section shall come into force on 6th April 1988 to the exclusion of the provisions of section 70 of the Finance (No.2) Act 1975 which are re-enacted in this section, but any offence committed before that date shall not be punishable under this section and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

562 Conditions to be satisfied by individuals

- (1) In the case of an application for the issue of a certificate under section 561 to an individual (otherwise than as a partner in a firm) the following conditions are required to be satisfied by that individual.
- (2) The applicant must be carrying on a business in the United Kingdom which satisfies the following conditions, that is to say—
 - (a) the business consists of or includes the carrying out of construction operations or the furnishing or arranging for the furnishing of labour in carrying out construction operations;
 - (b) the business is, to a substantial extent, carried on by means of an account with a bank;
 - (c) the business is carried on with proper records and in particular with records which are proper having regard to the obligations referred to in subsections (8) to (12) below; and
 - (d) the business is carried on from proper premises and with proper equipment, stock and other facilities.
- (3) Unless the applicant—
 - (a) is the holder of a certificate in force under section 561 (other than a holder to whom section 561(4) applies), or
 - (b) supplies the Board with a guarantee by such person, for such amount and in such form as may be prescribed in regulations made by the Board,he must throughout the period of three years ending with the date of his application for a certificate under section 561, have been employed in the United Kingdom as the holder of an office or employment or as a person carrying on a trade, profession or vocation.
- (4) The applicant must not be receiving full-time education or full-time training.
- (5) An applicant shall be treated as satisfying the condition in subsection (3) above if—
 - (a) he satisfies the Board that he has been employed as mentioned in that subsection throughout a period of three years beginning not more than six years before the date of his application and ending on a date before that date;
 - (b) he satisfies the Board either—
 - (i) that he has not been so employed throughout the whole of the period between those dates, or
 - (ii) that he has not been so employed during any part of that period other than a part for which he specifies he has been so employed; and
 - (c) where the applicant states that he has been outside the United Kingdom for the whole or part of the period mentioned in paragraph (b) above, he satisfies the Board of that fact by such evidence as may be prescribed in regulations made by the Board.
- (6) The Board may for the purposes of subsections (3) and (5) above treat a person as having been employed as mentioned in subsection (3) above throughout a period of three years if during a period of three years he has been so employed except for a period or periods not exceeding six months or six months in aggregate.
- (7) If the applicant satisfies the Board that he has during any period within six years before the date of his application attended a school or other establishment for the purpose of receiving full-time education or full-time training, this section shall have effect as if

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- that period were one during which he was employed as mentioned in subsection (3) above.
- (8) The applicant must, subject to subsection (10) below, have complied with all obligations imposed on him by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, any business of his in respect of periods so ending.
- (9) An applicant who at any time in the qualifying period had control of a company shall be taken not to satisfy the condition in subsection (8) above unless the company has satisfied that condition in relation to periods ending at a time within that period when he had control of it; and for this purpose “control” has the meaning given by section 840.
- (10) An applicant or company that has failed to comply with such an obligation or request as is referred to in subsection (8) above shall nevertheless be treated as satisfying that condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (13) below will be satisfied.
- (11) An applicant who must satisfy the Board under subsection (5) above that he has been outside the United Kingdom for the whole or part of the period mentioned in subsection (5)(b) above must also satisfy them by such evidence as may be prescribed in regulations made by the Board that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in subsection (8) above.
- (12) The applicant must, if any contribution has at any time during the qualifying period become due from him under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975, have paid the contribution when it became due.
- (13) There must be reason to expect that the applicant will, in respect of periods ending after the end of the qualifying period, comply with such obligations as are referred to in subsections (8) to (12) above and with such requests as are referred to in subsection (8) above.
- (14) In this section “the qualifying period” means—
- (a) in relation to a person who is within subsection (5) above, the period starting at the beginning of the last period of three years before his application throughout which he has been employed as mentioned in subsection (3) above (or is by virtue of subsection (6) above treated as having been so employed) and ending on the date of his application; and
 - (b) in the case of any other person, the period of three years ending with the date of his application.

563 Conditions to be satisfied by partners who are individuals

- (1) In the case of an application for the issue of a certificate under section 561 to an individual who is a partner in a firm, the following conditions are required to be satisfied by that individual.
- (2) The partner, unless he is the holder of a certificate in force under section 561 (other than a holder to whom section 561(4) applies), must throughout the period of three years ending with the date of his application for a certificate under section 561 have

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been employed in the United Kingdom as the holder of an office or employment or as a person carrying on a trade, profession or vocation.

- (3) A partner who has not fulfilled the condition in subsection (2) above shall nevertheless be treated as satisfying that condition if—
- (a) he satisfies the Board that he has been employed as mentioned in that subsection throughout a period of three years beginning not more than six years before the date of his application and ending on a date before that date;
 - (b) he satisfies the Board either—
 - (i) that he has not been so employed throughout the whole of the period between those dates, or
 - (ii) that he has not been so employed during any part of that period other than a part for which he specifies he has been so employed; and
 - (c) where the partner states that he has been outside the United Kingdom for the whole or part of the period mentioned in paragraph (b) above, he satisfies the Board of that fact by such evidence as may be prescribed in regulations made by the Board.
- (4) The Board may for the purposes of this paragraph treat a person as having been employed as mentioned in subsection (2) above throughout a period of three years if during a period of three years he has been so employed except for a period or periods not exceeding six months or six months in aggregate.
- (5) The partner must, subject to subsection (6) below, have complied with all obligations imposed on him by or under the Income Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, any business of his in respect of periods so ending.
- (6) A partner who has failed to comply with such an obligation or request as is referred to in subsection (5) above shall nevertheless be treated as satisfying that condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (9) below will be satisfied.
- (7) A partner who must satisfy the Board under subsection (3) above that he has been outside the United Kingdom for the whole or part of the period mentioned in subsection (3)(b) above must also satisfy them by such evidence as may be prescribed in regulations made by the Board that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in subsection (5) above.
- (8) The partner must, if any contribution has at any time during the qualifying period become due from him under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975, have paid the contribution when it became due.
- (9) There must be reason to expect that the partner will, in respect of periods ending after the end of the qualifying period, comply with such obligations as are referred to in subsections (5) to (8) above and with such requests as are referred to in subsection (5) above.
- (10) In this section “the qualifying period” means—
- (a) in relation to a person who is within subsection (3) above, the period starting at the beginning of the last period of three years before his application

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throughout which he has been employed as mentioned in subsection (2) above (or is by virtue of subsection (4) above treated as having been so employed) and ending on the date of his application, and

- (b) in the case of any other person, the period of three years ending with the date of his application.

564 Conditions to be satisfied by firms

- (1) In the case of an application for the issue of a certificate under section 561 to an individual or a company as a partner in a firm the following conditions are required to be satisfied by the firm.
- (2) The firm's business must be carried on in the United Kingdom and must satisfy the conditions mentioned in section 562(2)(a) to (d).
- (3) Subject to subsection (4) below, any income tax or corporation tax which became due from any partner in the firm in respect of the firm's business at any time in the period of three years ending with the date of the application for a certificate under section 561 must have been paid when the tax was demanded.
- (4) Where the obligation referred to in subsection (3) above has not been complied with in the case of any firm, the firm shall nevertheless be treated as satisfying that condition as regards that tax if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (5) below will be satisfied.
- (5) There must be reason to expect that income tax or corporation tax becoming due in respect of the firm's business in respect of periods ending after the end of the period referred to in subsection (3) above will be paid when it is demanded.

565 Conditions to be satisfied by companies

- (1) In the case of an application for the issue of a certificate under section 561 to a company (whether as a partner in a firm or otherwise), the following conditions are required to be satisfied by the company.
- (2) The company must be carrying on (whether or not in partnership) a business in the United Kingdom and that business must satisfy the conditions mentioned in section 562(2)(a) to (d).
- (3) The company must, subject to subsection (4) below, have complied with all obligations imposed on it by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, the business of the company in respect of periods so ending.
- (4) A company which has failed to comply with such an obligation or request as is referred to in subsection (3) above shall nevertheless be treated as satisfying this condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (8) below will be satisfied.
- (5) The company must, if any contribution has at any time during the qualifying period become due from the company under Part I of the Social Security Act 1975 or Part I

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of the Social Security (Northern Ireland) Act 1975 have paid the contribution when it became due.

- (6) The company must have complied with any obligations imposed on it by the following provisions of the Companies Act 1985, in so far as those obligations fell to be complied with within the qualifying period, that is to say—
- (a) sections 227 and 241 (contents, laying and delivery of annual accounts);
 - (b) section 287 (registered office and notification of changes therein);
 - (c) section 288(2) (return of directors and secretary and notification of changes therein);
 - (d) sections 363, 364 and 365 (annual returns);
 - (e) section 691 (registration of constitutional documents and list of directors and secretary of overseas company);
 - (f) section 692 (notification of changes in constitution or directors or secretary of overseas company);
 - (g) section 693 (overseas company to state its name and country of incorporation);
 - (h) section 699 (obligations of companies incorporated in Channel Islands or Isle of Man);
 - (j) Chapter II of Part XXIII (accounts of overseas company).
- (7) The company must have complied with any obligations imposed on it by the following provisions of the Companies (Northern Ireland) Order 1986, in so far as those obligations fell to be complied with within the qualifying period, that is to say—
- (a) Articles 235, 247 and 249 (annual accounts, documents included in annual accounts and laying and delivery of accounts);
 - (b) Article 295 (registered office and notification of changes therein);
 - (c) Article 296(2) (return of directors and secretary and notification of changes therein);
 - (d) Articles 371, 372 and 373 (annual returns);
 - (e) Article 641 (registration of constitutional documents and list of directors and secretary of overseas company);
 - (f) Article 642 (notification of changes in constitution or directors or secretary of overseas company);
 - (g) Article 643 (overseas company to state its name and country of incorporation);
 - (h) Article 649 (accounts of overseas company).
- (8) There must be reason to expect that the company will, in respect of periods ending after the end of the qualifying period, comply with all such obligations as are referred to in subsections (2) to (7) above and with such requests as are referred to in subsection (3) above.
- (9) In this section “qualifying period” means the period of three years ending with the date of the company’s application for a certificate under section 561.

566 General powers to make regulations under Chapter IV

- (1) The Board shall make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under section 559 and for the giving of receipts by persons receiving the payments to persons making them; and those regulations may include any matters with respect to which regulations may be made under section 203.

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- (2) The Board may make regulations—
- (a) prescribing the period for which certificates under section 561 are to be issued and the form of such certificates;
 - (b) providing for the renewal of such certificates;
 - (c) providing for the issue, renewal or cancellation of such certificates or the giving of directions under section 561(6) by inspectors on behalf of the Board;
 - (d) requiring the furnishing of information with respect to changes in the control of a company holding or applying for such a certificate;
 - (e) requiring the production of such certificates to such persons and in such circumstances as may be specified in the regulations and providing for the completion and return to the Board of forms certifying such production;
 - (f) requiring the surrender to the Board of such certificates in such circumstances as may be specified in the regulations;
 - (g) requiring persons who make payments under contracts relating to construction operations to keep such records and to make to the Board such returns relating to payments so made by them as may be specified in the regulations, and requiring persons who hold such certificates to keep such records relating to payments so made to them as may be so specified;
 - (h) with respect to the production, copying and removal of, and the making of extracts from, any records kept by virtue of any such requirement as is referred to in paragraph (g) above and with respect to rights of access to or copies of any such records which are removed;
 - (j) requiring vouchers for payments made under contracts relating to construction operations to persons who hold such certificates to be obtained by the person making, and given by the person receiving, the payment, prescribing the form of the vouchers, and requiring their production or surrender to the Board in such circumstances as may be specified in the regulations; and
 - (k) excluding payments from the operation of section 561 where, in such circumstances as may be specified in the regulations, the requirements of regulations relating to the production of certificates or the obtaining, production or surrender of vouchers have not been complied with;
- and any such regulations may make different provision for different circumstances.

Section 840 shall apply for the purposes of paragraph (d) above.

567 Meaning of “construction operations”

- (1) In this Chapter “construction operations” means operations of any description specified in subsection (2) below, not being operations of any description specified in subsection (3) below; and references to construction operations shall be taken—
- (a) except where the context otherwise requires, as including references to the work of individuals participating in the carrying out of such operations; and
 - (b) except in the case of offshore installations, as not including references to operations carried out or to be carried out otherwise than in the United Kingdom.
- (2) The following operations are, subject to subsection (3) below, construction operations for the purposes of this Chapter—

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- (a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;
 - (b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
 - (c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;
 - (d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
 - (e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works;
 - (f) painting or decorating the internal or external surfaces of any building or structure.
- (3) The following operations are not construction operations for the purposes of this Chapter—
- (a) drilling for, or extraction of, oil or natural gas;
 - (b) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works, for this purpose;
 - (c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;
 - (d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;
 - (e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;
 - (f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;
 - (g) signwriting and erecting, installing and repairing signboards and advertisements;
 - (h) the installation of seating, blinds and shutters;
 - (j) the installation of security systems, including burglar alarms, closed circuit television and public address systems.
- (4) In this section “offshore installations” means installations which are maintained, or are intended to be established, for underwater exploitation or exploration to which the Mineral Workings (Offshore Installations) Act 1971 applies.
- (5) The Treasury may by order—
- (a) include in subsection (2) above any description of operations as to which they are satisfied that it is a normal activity of the construction industry and that its inclusion in that subsection is necessary for achieving the object of section 559;

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- (b) include in subsection (3) above any description of operations as to which they are satisfied that it cannot properly be considered a normal activity of the construction industry and ought to be excluded from subsection (2) above.
- (6) An order under subsection (5) above shall not have effect unless a draft of the instrument containing it has been laid before and approved by a resolution of the House of Commons.

CHAPTER V

SCHEMES FOR RATIONALIZING INDUSTRY

568 Deductions from profits of contributions paid under certified schemes

- (1) Notwithstanding anything contained in section 74 but subject to the following provisions of this Chapter, where a person pays, wholly and exclusively for the purposes of a trade in respect of which he is chargeable under Case I of Schedule D, a contribution in furtherance of a scheme which is for the time being certified by the Secretary of State under this section, the contribution shall, in so far as it is paid in furtherance of the primary object of the scheme, be allowed to be deducted as an expense in computing the profits or gains of that trade.
- (2) The Secretary of State shall certify a scheme under this section if he is satisfied—
 - (a) that the primary object of the scheme is the elimination of redundant works or machinery or plant from use in an industry in the United Kingdom; and
 - (b) that the scheme is in the national interest and in the interests of that industry as a whole; and
 - (c) that such number of persons engaged in that industry as are substantially representative of the industry are liable to pay contributions in furtherance of the primary object of the scheme by agreement between them and the body of persons carrying out the scheme.

References in this subsection to an industry in the United Kingdom shall include references to the business carried on by owners of ships or of a particular class of ships, wherever that business is carried on, and, in relation to that business, references in this subsection to works or machinery or plant shall include references to ships.

- (3) The Secretary of State shall cancel any certificate granted under this section if he ceases to be satisfied as to any of the matters referred to in subsection (2) above.
- (4) The Secretary of State may at any time require the body of persons carrying out a scheme certified under this section to produce any books or documents of whatever nature relating to the scheme and, if the requirement is not complied with, he may cancel the certificate.
- (5) In this section and in section 569 “contribution”, in relation to a scheme, does not include a sum paid by a person by way of loan or subscription of share capital, or in consideration of the transfer of assets to him, or by way of a penalty for contravening or failing to comply with the scheme.

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569 Repayment of contributions

- (1) In the event of the repayment, whether directly or by way of distribution of assets on a winding up or otherwise, of a contribution or any part of a contribution which has been allowed to be deducted under section 568, the deduction of the contribution, or so much of it as has been repaid, shall be deemed to be an unauthorised deduction in respect of which an assessment shall be made, and, notwithstanding the provisions of the Tax Acts requiring assessments to be made within six years after the end of the chargeable period to which they relate, any such assessment and any consequential assessment may be made at any time within three years after the end of the chargeable period in which the repayment was made.
- (2) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

570 Payments under certified schemes which are not repayments of contributions

- (1) Subject to the provisions of this section, where, under any scheme which is for the time being certified or has at any time been certified by the Secretary of State under section 568, any payment (not being a payment made by way of repayment of contributions) is made to a person carrying on a trade to which the scheme relates, that payment shall be treated for the purposes of the Tax Acts as a trading receipt of the trade, and shall accordingly be taken into account in computing the profits or gains of the trade for those purposes.
- (2) Where on a claim it is shown in accordance with the provisions of Part II of Schedule 21 that the payments which have been made under such a scheme in respect of a trade (not being payments made by way of repayment of contributions) have been made wholly or partly in respect of damage in respect of which no relief may be given under the Tax Acts, then, subject to and in accordance with the provisions of that Schedule—
 - (a) relief shall be given in respect of those payments by reducing the amounts which are to be treated as trading receipts of the trade under subsection (1) above; but
 - (b) where such relief is given, section 568 shall, in relation to contributions subsequently paid under the scheme in respect of the trade, have effect subject to the modifications specified in Part III of that Schedule.
- (3) The provisions of this section and Schedule 21 shall apply in relation to any payment made to a person who has ceased to carry on a trade to which any such scheme as is mentioned in subsection (1) above relates as they apply in relation to payments made to a person carrying on such a trade, subject to the modification that so much of that payment as falls to be treated as a trading receipt by virtue of those provisions shall be deemed for the purposes of those provisions to have been made to him on the last day on which he was engaged in carrying on the trade.
- (4) In determining for the purposes of this section and of Schedule 21—
 - (a) whether any trade has ceased to be carried on; or
 - (b) whether any contribution is paid in respect of a trade in respect of which a payment has been made; or

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- (c) whether any payment is made in respect of a trade in respect of which a contribution has been paid,
no regard shall be had to any event which, by virtue of any of the provisions of section 113 or section 337(1), is to be treated as effecting a discontinuance of a trade.

571 Cancellation of certificates

- (1) Where any certificate granted with respect to a scheme under section 568 is cancelled by the Secretary of State, and any deductible contributions paid in furtherance of the scheme have not been repaid at the expiration of one year from the cancellation, the body of persons carrying out the scheme shall, for the chargeable period in which that year expires, be charged to tax under Case VI of Schedule D upon the aggregate amount of the deductible contributions which have not been repaid at that time.
- (2) The charge to tax under subsection (1) above shall not be made if the total amount of any contributions, other than deductible contributions, which have been paid under the scheme and have not been repaid before that time is greater than the available resources of the scheme, and shall not in any case be made upon an amount greater than the excess, if any, of those resources over that total amount.
- (3) In subsection (2) above “the available resources”, in relation to any scheme, means a sum representing the total funds held for the purposes of the scheme at the expiration of one year from the cancellation of the certificate plus a sum representing any funds held for the purposes of the scheme which, during that year, have been applied otherwise than in accordance with the provisions of the scheme as in force when the certificate was granted.
- (4) Where the body of persons carrying out a scheme are charged to tax by virtue of subsection (1) above, and, after the expiration of one year from the cancellation of the certificate, any deductible contribution paid in furtherance of the scheme is repaid, the amount upon which the charge is made shall on the making of a claim be reduced by the amount repaid, and all such repayments of tax shall be made as are necessary to give effect to the provisions of this subsection.
- (5) In this section “contribution” includes a part of a contribution, and “deductible contribution” means a contribution allowed to be deducted under section 568, any reduction under Part III of Schedule 21 being left out of account.
- (6) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

572 Application to statutory redundancy schemes

- (1) Sections 569 to 571 and Schedule 21 shall, subject to the adaptations specified in subsection (2) below, apply in relation to a statutory redundancy scheme as they apply in relation to a scheme certified under section 568.
- (2) The adaptations referred to above are as follows, that is to say—
 - (a) for any reference to a contribution allowed to be deducted under section 568 there shall be substituted a reference to a contribution allowed to be deducted under any provision of the Tax Acts other than that section;

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- (b) any provision that section 568 shall, in relation to contributions, have effect subject to modifications, shall be construed as a provision that so much of any provision of the Tax Acts other than that section as authorises the deduction of contributions shall, in relation to the contributions in question, have effect subject to the modifications in question;
 - (c) for any reference to the cancellation of a certificate with respect to a scheme there shall be substituted a reference to the scheme ceasing to have effect; and
 - (d) for any reference to the provisions of the scheme as in force when the certificate was granted there shall be substituted a reference to the provisions of the scheme as in force when the contributions were first paid thereunder.
- (3) In this section “statutory redundancy scheme” means a scheme for the elimination or reduction of redundant works, machinery or plant, or for other similar purposes, to which effect is given by or under any Act, whether passed before or after this Act.

CHAPTER VI

OTHER PROVISIONS

Relief for losses on unquoted shares in trading companies

573 Relief for companies

- (1) Subsection (2) below has effect where a company which has subscribed for shares in a qualifying trading company incurs an allowable loss (for the purpose of corporation tax on chargeable gains) on the disposal of the shares in any accounting period and the company disposing of the shares—
- (a) is an investment company on the date of the disposal and either—
 - (i) has been an investment company for a continuous period of six years ending on that date; or
 - (ii) has been an investment company for a shorter continuous period ending on that date and has not before the beginning of that period been a trading company or an excluded company; and
 - (b) was not associated with, or a member of the same group as, the qualifying trading company at any time in the period beginning with the date when it subscribed for the shares and ending with the date of the disposal.
- (2) The company disposing of the shares may, within two years after the end of the accounting period in which the loss was incurred, make a claim requiring that the loss be set off for the purposes of corporation tax against income—
- (a) of that accounting period; and
 - (b) if the company was then an investment company and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below;
- and, subject to any relief for an earlier loss, the income of any of those periods shall then be treated as reduced by the amount of the loss or by so much of it as cannot be relieved under this subsection against income of a later accounting period.
- (3) The time referred to in subsection (2) above is the period of 12 months ending immediately before the accounting period in which the loss is incurred; but the amount

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of the reduction which may be made under that subsection in the income of an accounting period falling partly before that time shall not exceed a part of that income proportionate to the part of the accounting period falling within that time.

- (4) Relief under subsection (2) above shall be given before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of any description; and where relief is given under that subsection in respect of the amount of a loss no deduction shall be made in respect of that amount for the purposes of corporation tax on chargeable gains.
- (5) For the purposes of subsection (1)(b) above companies are associated with each other if one controls the other or both are under the control of the same person or persons; and section 416(2) to (6) shall apply for the purposes of this subsection.
- (6) For the purposes of this section a company subscribes for shares in another company if they are issued to it by that other company in consideration of money or money's worth.

574 Relief for individuals

- (1) Where an individual who has subscribed for shares in a qualifying trading company incurs an allowable loss (for capital gains tax purposes) on the disposal of the shares in any year of assessment, he may, by notice given within two years after that year, make a claim for relief from income tax on an amount of his income equal to the amount of the loss; and where such relief is given in respect of the amount of a loss no deduction shall be made in respect of that amount under the 1979 Act.
- (2) The following provisions shall have effect as respects relief under this section—
 - (a) relief may, by notice given within two years after a year of assessment, be claimed for that year in respect of a loss incurred in the preceding year of assessment so far as relief under this section in respect of that loss has not already been given in that year, and relief claimed by virtue of this paragraph shall be given in priority to any relief in respect of a loss incurred in the year for which the relief is claimed;
 - (b) a claim for relief may require it to be given only by reference to the income of the individual without extending to the income of his spouse;
 - (c) subject to paragraph (b) above, relief shall be given by treating the loss as reducing first the earned income of the individual, then his other income, then the earned income of his spouse and then his spouse's other income;
 - (d) the relief shall be given in priority to relief under section 380 or 381.
- (3) For the purposes of this section—
 - (a) an individual subscribes for shares if they are issued to him by the company in consideration of money or money's worth; and
 - (b) an individual shall be treated as having subscribed for shares if his spouse did so and transferred them to him by a transaction *inter vivos*.

575 Exclusion of relief under section 573 or 574 in certain cases

- (1) Sections 573 and 574 do not apply unless the disposal is—
 - (a) by way of a bargain made at arm's length for full consideration; or
 - (b) by way of a distribution in the course of dissolving or winding up the company; or

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- (c) a deemed disposal under section 22(2) of the 1979 Act (claim that value of asset has become negligible).
- (2) Where a person disposes of shares (“the new shares”) which by virtue of section 78 of the 1979 Act (reorganisation etc. treated as not involving disposal) are identified with other shares (“the old shares”) previously held by him, relief shall not be given under section 573 or 574 on the disposal of the new shares unless—
- (a) relief under section 573 or 574 could (or if this section had been in force could) have been given on a disposal of the old shares if he had incurred an allowable loss in disposing of them as mentioned in subsection (1)(a) above on the occasion of the disposal that would have occurred but for section 78 of the 1979 Act; or
 - (b) he gave new consideration for the new shares;
- but in a case within paragraph (b) above the amount of relief under section 573 or 574 on the disposal of the new shares shall not exceed the amount or value of the new consideration taken into account as a deduction in computing the loss incurred on their disposal.
- (3) Where the shares are the subject of an exchange or arrangement of the kind mentioned in section 85 or 86 of the 1979 Act (company reconstructions etc.) which by reason of section 87 of that Act involves a disposal of the shares, section 573 or 574 shall not apply to any allowable loss incurred on the disposal.

576 Provisions supplementary to sections 573 to 575

- (1) Where a person holds shares in a company which constitute a holding and comprise—
- (a) shares for which he has subscribed (“qualifying shares”); and
 - (b) shares which he has acquired otherwise than by subscription,
- any question whether a disposal by him of shares forming part of the holding is of qualifying shares shall be determined by treating that and any previous disposal by him out of the holding as relating to shares acquired later rather than earlier; and if a disposal by him is of qualifying shares forming part of a holding and he makes a claim under section 573 or 574 in respect of a loss incurred on their disposal, the amount of relief under that section on the disposal shall not exceed the sums that would be allowed as deductions in computing the loss if the shares had not been part of the holding.
- (2) Where a claim is made under section 573 or 574 in respect of a loss accruing on the disposal of shares, section 26 of the 1979 Act (value-shifting) shall have effect in relation to the disposal as if for the references in subsections (1)(b) and (4) to a tax-free benefit there were substituted references to any benefit whether tax-free or not.
- (3) There shall be made all such adjustments of corporation tax on chargeable gains or capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of relief being given under section 573 or 574 in respect of an allowable loss or in consequence of the whole or part of such a loss in respect of which a claim is made not being relieved under that section.
- (4) For the purposes of sections 573 to 575 and this section a qualifying trading company is a company none of whose shares have at any time in the relevant period been quoted on a recognised stock exchange and which—
- (a) either—
 - (i) is a trading company on the date of the disposal; or

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- (ii) has ceased to be a trading company at a time which is not more than three years before that date and has not since that time been an excluded company or an investment company; and
 - (b) either—
 - (i) has been a trading company for a continuous period of six years ending on that date or at that time; or
 - (ii) has been a trading company for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company or an investment company; and
 - (c) has been resident in the United Kingdom throughout the period from its incorporation until that date.
- (5) In sections 573 to 575 and this section—
 - “excluded company” means a company—
 - (a) which has a trade which consists wholly or mainly of dealing in shares, securities, land, trades or commodity futures or is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised; or
 - (b) which is the holding company of a group other than a trading group; or
 - (c) which is a building society or a registered industrial and provident society as defined in section 486(12);
 - “group” means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries;
 - “holding” means a holding within the meaning of section 65 of the 1979 Act;
 - “holding company” means a company whose business consists wholly or mainly in the holding of shares or securities of one or more companies which are its 51 per cent. subsidiaries;
 - “investment company” has the meaning given by section 130 except that it does not include the holding company of a trading group;
 - “new consideration” means consideration in money or money’s worth other than consideration of the kind excluded by the first proviso to section 79(1) of the 1979 Act;
 - “relevant period” means the period ending with the date on which the shares in question are disposed of and beginning with the incorporation of the company, or, if later, one year before the date on which the shares were subscribed for;
 - “shares” includes stock but except in the definition of “excluded company” does not include shares or stock not forming part of a company’s ordinary share capital;
 - “spouse” refers to one of two spouses who are living together (construed in accordance with section 155(2) of the 1979 Act);
 - “trading company” means a company other than an excluded company which is—
 - (a) a trading company within the meaning of paragraph 7 of Schedule 19; or
 - (b) the holding company of a trading group;
 - “trading group” means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades, but for the purposes of this definition any trade carried on by a subsidiary which is

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an excluded company or not resident in the United Kingdom shall be treated as not constituting a trade.

Miscellaneous

577 Business entertaining expenses

- (1) Subject to the provisions of this section—
 - (a) no deduction shall be made in computing profits or gains chargeable to tax under Schedule A or Schedule D for any expenses incurred in providing business entertainment, and such expenses shall not be included in computing any expenses of management in respect of which relief may be given under the Tax Acts;
 - (b) no deduction for expenses so incurred shall be made from emoluments chargeable to tax under Schedule E; and
 - (c) for the purposes of Chapter II of Part I of the 1968 Act and Chapter I of Part III of the Finance Act 1971, the use of any asset for providing business entertainment shall be treated as use otherwise than for the purposes of trade.
- (2) Subsection (1) above shall not apply to expenses incurred in, or the use of an asset for, the provision by a person carrying on a trade in the United Kingdom (“a United Kingdom trader”), or by a member of his staff, of entertainment for an overseas customer of that person, being entertainment of a kind and on a scale which is reasonable having regard to all the circumstances.
- (3) The expenses to which paragraph (a) of subsection (1) above applies include, in the case of any person, any sums paid by him to, or on behalf of, or placed by him at the disposal of a member of his staff exclusively for the purpose of defraying expenses incurred or to be incurred by him in providing business entertainment, but where—
 - (a) any such sum falls to be included in his emoluments chargeable to tax under Schedule E; and
 - (b) the deduction or inclusion of that sum as mentioned in that paragraph falls to be disallowed in whole or in part by virtue of this section;
 paragraph (b) of that subsection shall not preclude the deduction of any expenses defrayed out of that sum.
- (4) Where by virtue of subsection (2) above a person claims to deduct or include any expenses as mentioned in paragraph (a) or (b) of subsection (1) above or claims any allowance under the provisions mentioned in paragraph (c) of that subsection he shall, if the inspector so requires, furnish particulars of the entertainment in question and of the person for whom it was provided.
- (5) For the purposes of this section “business entertainment” means entertainment (including hospitality of any kind) provided by a person, or by a member of his staff, in connection with a trade carried on by that person, but does not include anything provided by him for bona fide members of his staff unless its provision for them is incidental to its provision also for others.
- (6) For the purposes of this section “overseas customer” means, in relation to any United Kingdom trader—
 - (a) any person who is not ordinarily resident nor carrying on a trade in the United Kingdom and avails himself, or may be expected to avail himself, in the course of a trade carried on by him outside the United Kingdom, of any goods,

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- services or facilities which it is the trade of the United Kingdom trader to provide; and
- (b) any person who is not ordinarily resident in the United Kingdom and is acting, in relation to such goods, services or facilities, on behalf of an overseas customer within paragraph (a) above or on behalf of any government or public authority of a country outside the United Kingdom.
- (7) In this section—
- (a) any reference to expenses incurred in, or to the use of an asset for, providing entertainment includes a reference to expenses incurred in, or to the use of an asset for, providing anything incidental thereto;
- (b) references to a trade include references to any business, profession or vocation; and
- (c) references to the members of a person's staff are references to persons employed by that person, directors of a company or persons engaged in the management of a company being for this purpose deemed to be persons employed by it.
- (8) This section shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment, except that it shall not by virtue of this subsection apply in relation to the provision for any person of a gift consisting of an article incorporating a conspicuous advertisement for the donor, being an article—
- (a) which is not food, drink, tobacco or a token or voucher exchangeable for goods; and
- (b) the cost of which to the donor, taken together with the cost to him of any other such articles given by him to that person in the same year, does not exceed £10.
- (9) Subsection (8) above shall not preclude the deduction, in computing profits or gains under Case I or II of Schedule D, of expenditure incurred in making a gift to a body of persons or trust established for charitable purposes only; and for the purposes of this subsection the Historic Buildings and Monuments Commission for England and the Trustees of the National Heritage Memorial Fund shall each be treated as such a body of persons.
- (10) Nothing in this section shall be taken as precluding the deduction of expenses incurred in, or any claim for capital allowances in respect of the use of an asset for, the provision by any person of anything which it is his trade to provide, and which is provided by him in the ordinary course of that trade for payment or, with the object of advertising to the public generally, gratuitously.

578 Housing grants

- (1) Where, under any enactment relating to the giving of financial assistance for the provision, maintenance or improvement of housing accommodation or other residential accommodation, a payment is made to a person by way of grant or other contribution towards expenses incurred, or to be incurred, by that or any other person, the payment shall not be treated as a receipt in computing income for any tax purpose.
- (2) Subsection (1) above shall not apply to a payment in so far as it is made in respect of an expense giving rise to a deduction in computing income for any tax purpose.

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579 Statutory redundancy payments

- (1) Any redundancy payment, and the corresponding amount of any other employer's payment, shall be exempt from income tax under Schedule E.
- (2) Where a redundancy payment or other employer's payment is made in respect of employment wholly in a trade, profession or vocation carried on by the employer, and within the charge to tax, the amount of the redundancy payment or the corresponding amount of the other employer's payment shall (if not otherwise so allowable) be allowable as a deduction in computing for the purposes of Schedule D the profits or gains or losses of the trade, profession or vocation, but—
 - (a) if it is so allowed by virtue of this section the amount of the rebate recoverable shall (if it is not otherwise to be so treated) be treated as a receipt to be brought into account in computing those profits or gains; and
 - (b) if the employer's payment was made after the discontinuance of the trade, profession or vocation the net amount so deductible shall be treated as if it were a payment made on the last day on which the trade, profession or vocation was carried on.
- (3) Where a redundancy payment or other employer's payment is made in respect of employment wholly in a business carried on by the employer and expenses of management of the business are eligible for relief under section 75 or 76—
 - (a) the amount by which the redundancy payment, or the corresponding amount of the other employer's payment, exceeds the recoverable rebate shall (if not otherwise so allowable) be allowable as expenses of management eligible for relief under that section, and
 - (b) if the employer's payment was made after the discontinuance of the business the net amount so allowable shall be treated as if it were expenses of management incurred on the last day on which the business was carried on.
- (4) Where a redundancy payment or other employer's payment is made in respect of employment wholly in maintaining or managing property the expenses of maintaining or managing which were eligible for relief under the provisions of section 25(1) or 28—
 - (a) the amount by which the redundancy payment or the corresponding amount of the other employer's payment exceeds the recoverable rebate shall (if not otherwise allowable under those provisions) be treated for the purposes of those provisions as a payment made by the employer in respect of the maintenance or management of the property, or of such part of it as he may elect; and
 - (b) if the employer's payment was made after the latest time when it could be taken into account for the purposes of relief under those provisions as a payment in respect of the maintenance or management of the property or any part of it, it shall be treated as having been made at that time.
- (5) Relief shall not be given under subsections (2), (3) and (4) above, or otherwise, more than once in respect of any employer's payment, and if the employee was being employed in such a way that different parts of his remuneration fell for tax purposes to be treated in different ways—
 - (a) the amount by which the redundancy payment or the corresponding amount of the other employer's payment exceeds the recoverable rebate shall be apportioned to the different capacities in which the employee was employed; and

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- (b) subsections (2), (3) and (4) above shall apply separately to the employment in those capacities, and by reference to the apportioned part of that amount, instead of by reference to the full amount of the employer's payment, and the full amount of the rebate.
- (6) Where the Minister pays a sum under section 106 of the Employment Protection (Consolidation) Act 1978 or section 42 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 in respect of an employer's payment this section shall apply as if—
 - (a) that sum had been paid on account of that redundancy or other employer's payment, and
 - (b) so far as the employer has reimbursed the Minister, it had been so paid by the employer.

580 Provisions supplementary to section 579

- (1) In section 579—
 - (a) “redundancy payment”, “employer's payment” and “rebate” have the same meaning as in the Employment Protection (Consolidation) Act 1978 (“the 1978 Act”) or Part III of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (“the 1965 Act”);
 - (b) references to the corresponding amount of an employer's payment (other than a redundancy payment) are references to the amount of that employer's payment so far as not in excess of the amount of the relevant redundancy payment (and so that, where in consequence of section 104(2) of the 1978 Act or section 40(2) of the 1965 Act there is no relevant redundancy payment, the corresponding amount of an employer's payment is nil);
 - (c) “the Minister” in relation to the 1978 Act means the Secretary of State and in relation to the 1965 Act means the Department of Health and Social Services.
- (2) For the purposes of subsection (1) above “relevant redundancy payment” shall be construed in accordance with paragraph 8 of Schedule 6 to the 1978 Act or paragraph 8 of Schedule 6 to the 1965 Act.
- (3) In section 579(1) the reference to tax under Schedule E does not include a reference to tax under section 148 and accordingly payments exempted by section 579(1) may be taken into account under section 148.

581 Borrowing in foreign currency by local authorities and statutory corporations

- (1) If the Treasury direct that this section shall apply to any securities issued by a local authority and expressed in a currency other than sterling, interest on those securities—
 - (a) shall be paid without deduction of income tax, and
 - (b) so long as the beneficial owner is not resident in the United Kingdom, shall be exempt from income tax (but not corporation tax).
- (2) Where for repayment of the principal amount due under the securities there is an option between sterling and one or more currencies other than sterling, that subsection shall be applicable to the securities if the option is exercisable only by the holder of the securities, and shall not be applicable to the securities in any other case.
- (3) Where any income of any person is by virtue of any provision of the Income Tax Acts to be deemed to be income of any other person, that income shall not be exempt from

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tax by virtue of this section by reason of the first-mentioned person not being resident in the United Kingdom.

- (4) This section shall have effect in relation to any securities issued by or loan made to a statutory corporation as it has effect in relation to any securities issued by a local authority, the references to the beneficial owner or holder of the securities being for this purpose read, in the case of such a loan, as references to the person for the time being entitled to repayment or eventual repayment of the loan.
- (5) In subsection (4) above “statutory corporation” means —
- (a) a corporation incorporated by an Act; or
 - (b) any other corporation, being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by an Act or by an order made under or confirmed by an Act;
- but, save as is provided by paragraph (b) above, does not include any company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.
- (6) In relation to securities issued before 6th April 1982 subsections (1) and (2) above shall have effect with the substitution for references to sterling of references to a currency of a country which at the time of the issue was specified in Schedule 1 to the Exchange Control Act 1947.

582 Funding bonds issued in respect of interest on certain debts

- (1) Where any funding bonds are issued to a creditor in respect of any liability to pay interest on any debt to which this section applies—
- (a) the issue of the bonds shall be treated for all the purposes of the Tax Acts as if it were the payment of an amount of that interest equal to the value of the bonds at the time of their issue, and
 - (b) the redemption of the bonds shall not be treated for those purposes as the payment of any amount of that interest.
- (2) Where an issue of bonds is treated by virtue of subsection (1) above as if it were the payment of an amount of interest, and any person by or through whom the bonds are issued would be required by virtue of any provision of the Tax Acts to deduct income tax from that amount of interest if it had been actually paid by or through him, the following provisions shall have effect—
- (a) subject to paragraph (b) below, any such person—
 - (i) shall retain bonds the value of which at the time of their issue is equal to income tax on that amount of interest at the basic rate for the year of assessment in which the bonds are issued, and
 - (ii) shall be acquitted in respect of any such retention in the same way as if he had deducted such tax from the interest, and
 - (iii) shall be chargeable with that tax accordingly, but may tender the bonds retained in satisfaction thereof;
 - (b) where the Board are satisfied that it is impracticable to retain bonds on account of income tax under paragraph (a) above—
 - (i) they may relieve any such person from the obligation to retain bonds and account for income tax under that paragraph, on his furnishing to them a statement of the names and addresses of the persons to whom

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- the bonds have been issued and the amount of the bonds issued to each such person; and
- (ii) tax in respect of the amount of interest treated by virtue of this section as having been paid by the issue of the bonds shall be charged under Case VI of Schedule D for the chargeable period in which the bonds are issued on the persons receiving or entitled to the bonds.
- (3) This section applies to any debt incurred, whether in respect of any money borrowed or otherwise, by any government, public authority or public institution whatsoever, or by any body corporate whatsoever.
- (4) For the purposes of this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

583 Inter-American Development Bank

A person not resident in the United Kingdom shall not be liable to income tax in respect of income from any security issued by the Inter-American Development Bank if he would not be liable but for the fact that—

- (a) the security or income is issued, made payable or paid in the United Kingdom or in sterling; or
- (b) the Bank maintains an office or other place of business in the United Kingdom.

584 Relief for unremittable overseas income

- (1) Where a person is chargeable to tax by reference to the amount of any income arising in a territory outside the United Kingdom (“overseas income”), then for the purposes of tax this section shall apply to the overseas income in so far as—
- (a) he is prevented from transferring the amount of the overseas income to the United Kingdom, either by the laws of that territory or any executive action of its government or by the impossibility of obtaining foreign currency in that territory; and
- (b) he has not realised the overseas income outside that territory for a consideration in sterling or a consideration in some other currency which he is not prevented from transferring to the United Kingdom.

Overseas income to which this section applies is referred to below as unremittable.

- (2) Subject to subsection (3) below, where a person so chargeable gives notice of his desire to be assessed in accordance with this subsection, then, in the first instance, account shall not be taken of the overseas income to the extent to which he shows to the satisfaction of the Board that the following conditions are satisfied with respect to it, that is to say—
- (a) that it is unremittable; and
- (b) that subsection (1)(a) above would continue to apply notwithstanding any reasonable endeavours on his part,

and tax shall be assessed and charged on all persons concerned and for all periods accordingly; but, on the Board ceasing, as respects any part of the income, to be satisfied that those conditions are satisfied, such assessments, reductions of assessments and repayments of tax shall be made as may be necessary to take account of it, and of any tax payable in respect of it under the law of the territory where it

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- arises, according to their value at the date when, in the opinion of the Board, those conditions cease to be satisfied with respect to it, and may be so made at any time not later than six years after that date.
- (3) Where the tax chargeable is corporation tax, subsection (2) above shall have effect as if—
- (a) for the word “assessed” in the second place where it occurs, there were substituted “assessable”;
 - (b) for the words from “on the Board ceasing” to “take account” there were substituted “on the said conditions ceasing to be satisfied as respects any part of the income, it shall be treated as income arising on the date when those conditions cease to be satisfied with respect to it and account shall be taken”; and
 - (c) for the words from “the date” onwards there were substituted “that date”.
- (4) Where a company becomes chargeable to corporation tax in respect of income from any source by virtue of subsections (2) and (3) above after it has ceased to possess that source of income, the income shall be chargeable under Case VI of Schedule D.
- (5) Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the Export Guarantees and Overseas Investment Act 1978 any payment is made by the Export Credit Guarantee Department in respect of any income which cannot be transferred to the United Kingdom, then, to the extent of the payment, the income shall be treated as income with respect to which the conditions mentioned in subsection (2) above are not satisfied (and accordingly cannot cease to be satisfied).
- (6) Any notice under subsection (2) above shall be delivered to the inspector before an assessment made by reference to that income otherwise than in accordance with that subsection has become final and conclusive; and there shall be made all such assessments, reductions of assessments or repayments of tax as may be required by reason of any such notice.
- (7) In the case of the death of a person who, if he had not died, would, under subsection (2) above, have become chargeable to any income tax, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.
- (8) Subject to subsections (2) and (3) above, the amount of any unremittable overseas income shall be determined by reference to the generally recognised market value in the United Kingdom (if any), or, in the absence of any such value, according to the official rate of exchange of the territory where the income arises.
- (9) Any appeal against an assessment which involves a question as to the operation of this section shall be made to the Special Commissioners and not to the General Commissioners.
- (10) This section shall have effect as respects any accounting period in which the conditions in subsection (2) above cease to be satisfied in relation to any income, being an accounting period ending on or before such day, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this section, with the omission of subsections (3) and (4).

585 Relief from tax on delayed remittances

- (1) A person charged or chargeable for any year of assessment in respect of income from any source with tax which (apart from this section) falls to be computed under Case IV or V of Schedule D, or under Case III of Schedule E, on the amount of income received in the United Kingdom in the basis year for that year of assessment, may by making a claim require that the following provisions of this section shall apply, on showing that the following conditions are satisfied, that is to say—
 - (a) that of the income so received all or part arose before the basis year but he was unable to transfer it to the United Kingdom before that year; and
 - (b) subject to subsection (2) below, that that inability was due to the laws of the territory where the income arose, or to executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and
 - (c) that the inability was not due to any want of reasonable endeavours on his part.
- (2) For the purposes of this section, where in any year of assessment a person is granted a pension or increase of pension retrospectively, the amount paid in respect of any previous year of assessment by virtue of the grant shall be treated as income arising in that previous year, whenever it is paid, and he shall be treated as having possessed the source of income from the time as from which the grant has effect; and subsection (1) (b) above shall not apply in relation to any amount so paid, except as respects the period after it becomes payable.
- (3) Where a person claims that the provisions of this section shall apply for any year of assessment as respects the income from any source, then for the purposes of income tax—
 - (a) there shall be deducted from the income received in the United Kingdom in the basis year for that year the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) above are satisfied, so far as applicable; but
 - (b) the part (if any) of that amount arising in each previous year of assessment shall be treated as if it were income received in the United Kingdom in the basis year for that previous year.
- (4) Nothing in this section shall alter the year which is to be taken as the basis year for computing tax chargeable for any year of assessment under Case IV or V of Schedule D, and where under subsection (3)(b) above income is treated as received in the United Kingdom in a year which is the basis year for two years of assessment, it shall not by reason thereof be taken into account except in the year in which it arose.
- (5) Where—
 - (a) a person makes a claim under this section for any year of assessment as respects income from any source chargeable under Case IV or V of Schedule D, and
 - (b) that year is the basis year for computing the tax with which he is chargeable on the income from that source both for that and for the succeeding year of assessment,tax shall not be chargeable for either of those years of assessment on the amount referred to in paragraph (a) of subsection (3) above (without however being charged a second time by virtue of paragraph (b) of that subsection).

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- (6) No claim under this section shall be made in respect of any income more than six years after the end of the year of assessment in which the income is received in the United Kingdom.
- (7) There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section, and notwithstanding anything in the Income Tax Acts, any adjustment to give effect to a claim under this section may be made at any time.
- (8) A person's executors or administrators may make any claim under this section which he might have made, if he had not died, and after a person's death—
 - (a) any tax paid by him and repayable by virtue of a claim under this section (whoever made the claim) shall be repaid to his executors or administrators; and
 - (b) any additional tax chargeable by virtue of such a claim shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.
- (9) In this section "basis year" means—
 - (a) in relation to tax chargeable for any year of assessment under Case IV or V of Schedule D in respect of income from any source, the year by reference to which the amount of the income chargeable finally falls to be computed; and
 - (b) in relation to tax chargeable for any year of assessment under Case III of Schedule E, that year of assessment;
 and any reference in this section to a source of income includes a part of a source.

586 Disallowance of deductions for war risk premiums

- (1) In computing the amount of the profits or gains of any person for any tax purpose, no sum shall be deducted in respect of any payment made by him to which this section applies.
- (2) No payment to which this section applies shall be included in computing the expenses of management in respect of which relief may be given under section 75 or 76.
- (3) Subject to subsections (4) and (5) below, this section applies to any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of that war damage.
- (4) Where the payment is made in respect of the right or eligibility mentioned in subsection (3) above and also in respect of other matters, the deduction or inclusion of so much of the payment as is properly attributable to the other matters shall not be disallowed by virtue only of subsection (1) or (2) above.
- (5) This section shall not apply to any payment made under any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit.
- (6) In this section "war damage" means loss or damage arising from action taken by an enemy of Her Majesty, or action taken in combating such an enemy or in repelling an imagined attack by such an enemy, or action taken in anticipation of or in consequence of an attack by such an enemy.

587 Disallowance of certain payments in respect of war injuries to employees

- (1) In computing the amount of the profits or gains, or total income, of any person for any tax purpose, no sum shall be deducted in respect of any payment made by him to which this section applies.
- (2) No payment to which this section applies shall be included in computing—
 - (a) the expenses of management in respect of which relief may be given under section 75 or 76; or
 - (b) the expenses of management or supervision in respect of which relief may be given under section 121.
- (3) Subject to subsections (4) and (5) below, this section applies—
 - (a) to any payments by way of benefit made by any person to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to war injuries, whether sustained in the United Kingdom or elsewhere; and
 - (b) to any payments made by any person by way of premium or contribution under any policy, agreement, scheme or arrangement providing for the payment of benefits to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to such war injuries.
- (4) This section shall not apply to any payment (whether by way of benefit or by way of premium or contribution) which is payable under any policy, agreement, scheme or arrangement made before 3rd September 1939, except to the extent that the amount of the payment is increased by any variation of the terms of that policy, agreement, scheme or arrangement made on or after that date.
- (5) This section shall not apply to any payment by way of benefit if, in the opinion of the Board, that payment was made under an established practice which was such that the same or a greater payment would have been made if the incapacity, retirement or death had not been due to war injuries.
- (6) Where a person makes a payment by way of benefit to which this section applies and, in the opinion of the Board, there is an established practice under which a smaller payment would have been made if the incapacity, retirement or death had not been due to war injuries, the deduction or inclusion of an amount equal to that smaller payment shall not be disallowed by virtue only of subsection (1) or (2) above.
- (7) Where a person makes a payment to which this section applies by way of premium or contribution, and the policy, agreement, scheme or arrangement provides for the payment of any benefit in the event of incapacity, retirement or death not due to war injuries, the deduction or inclusion of so much of the payment of premium or contribution as, in the opinion of the Board, is properly attributable to benefit payable in the event of incapacity, retirement or death not due to war injuries shall not be disallowed by virtue only of subsection (1) or (2) above.
- (8) In this section “war injuries” means physical injuries—
 - (a) caused by—
 - (i) the discharge of any missile (including liquids and gas);
 - (ii) the use of any weapon, explosive or other noxious thing; or
 - (iii) the doing of any other injurious act,

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either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

- (b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of, or for the benefit of, Her Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

588 Training courses for employees

- (1) Where, on or after 6th April 1987, a person (in this section referred to as the “employer”) incurs expenditure in paying or reimbursing relevant expenses incurred in connection with a qualifying course of training which—

- (a) is undertaken by a person (in this section referred to as the “employee”) who is the holder or past holder of any office or employment under the employer; and
- (b) is undertaken with a view to retraining the employee,

the employee shall not thereby be regarded as receiving any emolument which forms part of his income for any purpose of Schedule E.

- (2) Section 589 shall have effect to determine for the purposes of this section—

- (a) what is a qualifying course of training;
- (b) whether such a course is undertaken by an employee with a view to retraining; and
- (c) what are relevant expenses in relation to such a course.

- (3) Subject to subsection (4) below, where—

- (a) an employer incurs expenditure in paying or reimbursing relevant expenses as mentioned in subsection (1) above; and
- (b) that subsection has effect in relation to the income of the employee for the purposes of Schedule E;

then, if and so far as that expenditure would not, apart from this subsection, be so deductible, it shall be deductible in computing for the purposes of Schedule D the profits or gains of the trade, profession or vocation of the employer for the purposes of which the employee is or was employed.

- (4) If the employer carries on a business, the expenses of management of which are eligible for relief under section 75, subsection (3) above shall have effect as if for the words from “in computing” onwards there were substituted “as expenses of management for the purposes of section 75”.

- (5) In any case where—

- (a) an employee’s liability to tax for any year of assessment is determined (by assessment or otherwise) on the assumption that subsection (1) above applies in his case and, subsequently, there is a failure to comply with any provision of section 589(3) and (4); or
- (b) an employer’s liability to tax for any year is determined (by assessment or otherwise) on the assumption that, by virtue only of subsection (3) above (or subsections (3) and (4) above), he is entitled to a deduction on account of any expenditure and, subsequently, there is such a failure as is referred to in paragraph (a) above;

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an assessment under section 29(3) of the Management Act of an amount due in consequence of the failure referred to above may be made at any time not later than six years after the end of the chargeable period in which the failure occurred.

- (6) Where an event occurs by reason of which there is a failure to comply with any provision of section 589(3) and (4), the employer of the employee concerned shall within 60 days of coming to know of the event give a notice to the inspector containing particulars of the event.
- (7) If the inspector has reason to believe that an employer has not given a notice which he is required to give under subsection (6) above in respect of any event, the inspector may by notice require the employer to furnish him within such time (not less than 60 days) as may be specified in the notice with such information relating to the event as the inspector may reasonably require for the purposes of this section.

589 Qualifying courses of training etc

- (1) Subject to subsection (2) below, a course is a qualifying course of training if—
 - (a) it provides a course of training designed to impart or improve skills or knowledge relevant to, and intended to be used in the course of, gainful employment (including self-employment) of any description; and
 - (b) the course is entirely devoted to the teaching or practical application of the skills or knowledge (or to both such teaching and practical application); and
 - (c) the duration of the course does not exceed one year; and
 - (d) all teaching and practical application forming part of the course takes place within the United Kingdom.
- (2) A course shall not be regarded as a qualifying course of training in relation to a particular employee unless—
 - (a) he attends the course on a full-time or substantially full-time basis; and
 - (b) he is employed by the employer full-time throughout the period of two years ending at the time when he begins to undertake the course or, if it is earlier, at the time he ceases to be employed by him; and
 - (c) the opportunity to undertake the course, on similar terms as to payment or reimbursement of relevant expenses, is available either generally to holders or past holders of offices or employment under the employer or to a particular class or classes of such holders or past holders.
- (3) An employee shall not be regarded as undertaking a course with a view to retraining unless—
 - (a) he begins to undertake the course of training while he is employed by the employer or within the period of one year after he ceases to be so employed; and
 - (b) he ceases to be employed by the employer not later than the end of the period of two years beginning at the end of the qualifying course of training.
- (4) An employee shall not be regarded as having undertaken a course with a view to retraining if, any time within the period of two years beginning at the time when he ceased to be employed as mentioned in subsection (3)(b) above, he is again employed by the employer.
- (5) Where an employee undertakes a qualifying course of training, the relevant expenses consist of—

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- (a) fees for attendance at the course;
 - (b) fees for any examination which is taken during or at the conclusion of the course;
 - (c) the cost of any books which are essential for a person attending the course, and
 - (d) travelling expenses falling within subsection (6) below.
- (6) The travelling expenses referred to in subsection (5)(d) above are those which would be deductible under section 198—
- (a) on the assumption that attendance at the course is one of the duties of the employee's office or employment; and
 - (b) if the employee has in fact ceased to be employed by the employer, on the assumption that he continues to be employed by him.
- (7) Any reference in this section to an employee being employed by an employer is a reference to the employee holding office or employment under the employer.