



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII

#### TAX AVOIDANCE

### CHAPTER VI

#### MISCELLANEOUS

##### *Migration etc. of company*

#### **765 Migration etc. of companies.**

<sup>M1</sup>(1) Subject to the provisions of this section [<sup>F1</sup>and section 765A], all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—

- (a) *for a body corporate resident in the United Kingdom to cease to be so resident; or*
- (b) *for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or*
- <sup>F2</sup>(c) for a body corporate [<sup>F3</sup>resident in the United Kingdom] to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or
- (d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.

(2) Nothing in subsection (1)(c) above shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any

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sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.

- (3) Nothing in subsection (1)(c) above shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.
- (4) Any consent granted by the Treasury under this section—
- (a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only so to apply); and
  - (b) may, if given generally, be revoked by the Treasury; and
  - (c) may in any case be absolute or conditional; and
  - (d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.

#### Textual Amendments

- F1** 1990 s.68(1), (4) *in relation to transactions carried out on or after 1 July 1990.*
- F2** *Repealed by 1988(F) ss.105(6), 148 and Sch.14 Part IV from 15 March 1988. And see 1988(F) ss.61, 130-132 and Sch.7 for new requirements for companies from 15 March 1988.*
- F3** 1988(F) s.105(6) *from 15 March 1988. Previously*  
“so resident”.

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

- C1** *Provisions of this section employed in 1988(F) ss.105, 130 and Sch.7.*

#### Marginal Citations

- M1** Source—1970 s.482(1)-(4)

### [<sup>F4</sup>765A Movements of capital between residents of member States.

- (1) Section 765(1) shall not apply to a transaction which is a movement of capital to which Article 1 of the <sup>M2</sup> Directive of the Council of the European Communities dated 24th June 1988 No. 88/361/EEC applies.
- (2) Where if that Article did not apply to it a transaction would be unlawful under section 765(1), the body corporate in question (that is to say, the body corporate resident in the United Kingdom) shall—
- (a) give to the Board within six months of the carrying out of the transaction such information relating to the transaction, or to persons connected with the transaction, as regulations made by the Board may require, and
  - (b) where notice is given to the body corporate by the Board, give to the Board within such period as is prescribed by regulations made by the Board (or such longer period as the Board may in the case allow) such further particulars relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.]

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#### Textual Amendments

- F4** S. 765A inserted (with effect in accordance with s. 68(4) of the amending Act) by [Finance Act 1990 \(c. 29\), s. 68\(2\)](#)

#### Marginal Citations

- M2** O.J. No. L178/5

### 766 Offences under section 765.

- (1) <sup>M3</sup> Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, something which is unlawful under section 765(1) shall be guilty of an offence under this section.
- (2) In any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—
- it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and
  - it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under section 765(1) was to his knowledge such an act.
- (3) <sup>M4</sup> Any person who is guilty of an offence under this section shall be liable on conviction on indictment—
- to imprisonment for not more than two years or to a fine, or to both; or
  - where the person in question is a body corporate which is or was resident in the United Kingdom, to a fine not exceeding an amount equal to three times the corporation tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the 36 months immediately preceding the commission of the offence, or £10,000, whichever is the greater;
- and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.
- (4) <sup>M5</sup> No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General, or in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

#### Marginal Citations

- M3** Source—1970 s.482(5)  
**M4** Source—1970 s.482(6)  
**M5** Source—1970 s.482(11)

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## 767 Interpretation and commencement of sections 765 and 766.

- (1) <sup>M6</sup>A body corporate shall be deemed for the purposes of sections 765 and 766 to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom.
- (2) If it is shown that it has been established as between the Crown and a body corporate for any income tax or corporation tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of sections 765 and 766 at the beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.
- (3) <sup>M7</sup>Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this section and sections 765 and 766 to be a business carried on by the body corporate.
- (4) Notwithstanding anything in the preceding provisions of this section or in sections 765 and 766, in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purposes of sections 765 and 766 as a transfer of part of its trade or business<sup>F5</sup>.
- (5) In this section and in sections 765 and 766—
  - “share”, “debenture” and “director” have, in relation to any body corporate, the meanings respectively assigned to them by Part XXVI of the <sup>M8</sup>Companies Act 1985 in relation to a company;
  - “control” (except in the expression “central management and control”) has, in relation to a body corporate, the meaning given by section 840;
  - “transfer”, in relation to shares or debentures, includes a transfer of any beneficial interest therein;
  - “insurance company” means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere; and
  - “funds” in relation to an insurance company means the funds held by it in connection with that business;

*and a body corporate shall not be deemed for the purposes of this section and sections 765 and 766 to cease to be resident in the United Kingdom by reason only that it ceases to exist<sup>F6</sup>.*
- (6) <sup>M9</sup>This section and sections 765 and 766 shall come into force on 6th April 1988 to the exclusion of section 482 of the 1970 Act (which is re-enacted by those sections); but any offence committed before 6th April 1988 shall not be punishable under section 766 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.

### Textual Amendments

- F5** Repealed by 1988(F) s.148 and Sch. 14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).  
**F6** Repealed by 1988(F) s.148 and Sch. 14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

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#### **Marginal Citations**

- M6** Source—1970 s.482(7)  
**M7** Source—1970 s.482(8)-(10)  
**M8** 1985 c. 6.  
**M9** Source—1970 s.482(12)

### *Change in ownership of company*

#### **767A Change in company ownership: corporation tax.**

- (1) Where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the tax-payer company”),
  - (b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and
  - (c) any of the three conditions mentioned below is fulfilled,any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.
- (2) The persons are—
  - (a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.
- (3) In subsection (2) above, “the relevant period” means—
  - (a) the period of three years before the change in the ownership of the tax-payer company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the tax-payer company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (4) The first condition is that—
  - (a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and
  - (b) there is no significant revival of those activities before that change occurs.
- (5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.
- (6) The third condition is that—
  - (a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;
  - (b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under

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- arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;
- (c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and
  - (d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.
- (7) The persons are—
- (a) any person mentioned in subsection (2)(a) above; and
  - (b) any person connected with him.
- (8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.
- (9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

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

- C2** Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

**[<sup>F7</sup>767AA] Change in company ownership: postponed corporation tax.**

- (1) Where it appears to the Board that—
- (a) there has been a change in the ownership of a company (“the transferred company”),
  - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
  - (c) that tax remains unpaid at any time more than six months after it was assessed, and
  - (d) the condition set out in subsection (2) below is fulfilled,
- any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.
- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
- (a) the terms of any transactions entered into in connection with the change, and
  - (b) the other circumstances of the change and of any such transactions,
- that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—

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- (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
  - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,
- would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).
- (4) The persons mentioned in subsection (1) above are—
- (a) any person who at any time during the relevant period had control of the transferred company;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
- (5) In subsection (4) above, “the relevant period” means—
- (a) the period of three years before the change in the ownership of the transferred company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—
- (a) it is the transaction, or one of the transactions, by which that change is effected; or
  - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.
- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
  - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
  - (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
    - (i) would not have been entered into independently of the other or others; or
    - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the transferred company;
  - (b) is a company of which the transferred company has control; or
  - (c) is a company under the control of the same person or persons as the transferred company.

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- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.]

#### Textual Amendments

**F7** S. 767AA inserted (with effect in accordance with s. 114(2) of the amending Act) by Finance Act 1998 (c. 36), s. 114(1)

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

**C3** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

### 767B Change of company ownership: supplementary.

- (1) In relation to corporation tax assessed under section 767A—
- (a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and
  - (b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),

shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.

[<sup>F8</sup>(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).]

- (2) A payment in pursuance of an assessment under section 767A [<sup>F9</sup>or 767AA] shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company [<sup>F10</sup>or the transferred company or associated company (as the case may be)].
- (3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).
- (4) For the purposes of [<sup>F11</sup>sections 767A, 767AA and 767C], “control”, in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.
- (5) In subsection (2)(a) for “the greater part of” there shall be substituted “50 per cent. of”.
- (6) For subsection (3) there shall be substituted—



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- (”) Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company.”
- (7) In section 767A(6) “a major change in the nature or conduct of a trade or business” includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.
- (8) In section 767A(6) “transfer”, in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.
- (9) Section 839 shall apply for the purposes of section 767A(7).
- (10) Subsection (9) of section 768 shall apply for the purposes of [F12]sections 767A and 767AA] as it applies for the purposes of section 768.

#### Textual Amendments

- F8** S. 767B(1A) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(1)
- F9** Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(2)(a)
- F10** Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(2)(b)
- F11** Words in s. 767B(4) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(3)
- F12** Words in s. 767B(10) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(4)

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

- C4** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

### [F13]767C Change in company ownership: information.

- (1) This section applies where it appears to the Board that—
- there has been a change in the ownership of a company (“the subject company”); and
  - in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
- any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
  - any particulars which appear to them to be so relevant.
- (3) Those matters are—

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- (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
  - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.
- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—
- (a) subsection (4) of section 20B of the <sup>M10</sup>Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
  - (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;
- and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.
- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
  - (b) is a company of which the subject company has control; or
  - (c) is a company under the control of the same person or persons as the subject company.
- (10) In this section “document” means anything in which information of any description is recorded.]

#### Textual Amendments

**F13** S. 767C inserted (with effect in accordance with s. 115(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 115\(1\)](#)

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

**C5** Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

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### Marginal Citations

M10 1970 c. 9.

## 768 Change in ownership of company: disallowance of trading losses.

<sup>M11</sup>(1) If—

- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

- (2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.
- (3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.
- (4) In subsection (1) above “major change in the nature or conduct of a trade” includes—
  - (a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or
  - (b) a major change in customers, outlets or markets of the trade;and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.
- (5) In relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.
- (6) Where relief in respect of a company’s losses has been restricted under this section then, notwithstanding [<sup>F14</sup>section 577(3) of the Capital Allowances Act], in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company’s trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.
- (7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.
- (8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give

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effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.

- (9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

#### Textual Amendments

- F14** Words in s. 768(6) substituted (with effect in accordance with s. 579 of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 55](#)

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

- C6** Ss. 768, 768D modified (8.6.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), [Sch. 10 para. 11](#); [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- C7** Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [reg. 36](#) to be construed as one (6.4.2006) with these sections, by virtue of that reg.
- C8** Ss. 768-768E modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 13 para. 30](#)
- C9** See s.245—*calculation etc. of ACT on change of ownership.*

#### Marginal Citations

- M11** Source—1970 s.483(1)-(7)

### [768A <sup>F15</sup>Change in ownership: disallowance of carry back of trading losses.

- (1) In any case where—
- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
  - (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,
- no relief shall be given under section 393A(1) by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.
- (2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.]

#### Textual Amendments

- F15** S. 768A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 73(3)(4)(5), [Sch. 15 para. 20\(1\)](#)

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

**C10** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

**[<sup>F17</sup>768B][<sup>F16</sup>Change in ownership of company with investment business: deductions generally]**

- (1) This section applies where there is a change in the ownership of [<sup>F18</sup>a company with investment business] and—
  - (a) after the change there is a significant increase in the amount of the company’s capital; or
  - (b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or
  - (c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.
- (2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company’s capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.
- (3) In paragraph (b) of subsection (1) above “major change in the nature or conduct of a business” includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.
- (4) For the purposes of this section—
  - (a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
  - (b) those parts shall be treated as two separate accounting periods; and
  - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (5) In Schedule 28A—
  - (a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and
  - (b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (6) Any sums which—
  - (a) [<sup>F19</sup>are, or are treated as, expenses of management referable to the accounting period] being divided, and
  - (b) under Part III of Schedule 28A are apportioned to either part of that period, shall be treated for the purposes of section 75 [<sup>F20</sup>expenses of management referable to that part].
- (7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.

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- (8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of [F21]section 253 of the Capital Allowances Act] and section [F22]75(7)] as falling to be made in that part.
- (9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—
- (a) [F23]expenses of management deductible] or allowances falling to be made for an accounting period beginning before the change; or
  - (b) charges paid in such an accounting period.
- [F24](10) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the company's loan relationships [F25](including debits so brought into account by virtue of paragraph 14(3)of Schedule 26 to the Finance Act 2002)].]
- (12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (13) The modification is that in subsection (6) of section 768 for the words “relief in respect of a company's losses has been restricted” there shall be substituted “deductions from a company's total profits [F26], or the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in the case of a company in respect of its loan relationships [F27](or its derivative contracts by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)],] have been restricted.”
- (14) In this section [F28]“company with investment business”] has the same meaning as in Part IV.]

#### Textual Amendments

- F16** S. 768B sidenote substituted (with effect in accordance with ss. 42-44 of the amending Act) by virtue of Finance Act 2004 (c. 12), **Sch. 6 para. 3(7)**
- F17** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 2**
- F18** Words in s. 768B(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(2)**
- F19** Words in s. 768B(6)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(3)(a)**
- F20** Words in s. 768B(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(3)(b)**
- F21** Words in s. 768B(8) substituted (with effect in accordance with s. 579 of the amending Act) by **Capital Allowances Act 2001 (c. 2), Sch. 2 para. 56**
- F22** Words in s. 768B(8) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(4)**
- F23** Words in s. 768B(9)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(5)**
- F24** S. 768B(10) substituted for s. 768B(10)(11) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 39(1)** (with Sch. 15)
- F25** Words in s. 768B(10) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 9(a)** (with Sch. 28)

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- F26** Words in s. 768B(13) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 39(2)** (with Sch. 15)
- F27** Words in s. 768B(13) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 9(b)** (with Sch. 28)
- F28** Words in s. 768B(14) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(6)**

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

- C11** Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), s. 43(7)

**[<sup>F17</sup>768C Deductions: asset transferred within group.**

- (1) This section applies where—
- there is a change in the ownership of [<sup>F29</sup>a company with investment business] (“the relevant company”);
  - none of paragraphs (a) to (c) of section 768B(1) applies;
  - after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and
  - a chargeable gain (“a relevant gain”) accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.
- (2) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold and the first asset was a leasehold and the lessee has acquired the reversion.
- (3) For the purposes of this section—
- the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
  - those parts shall be treated as two separate accounting periods; and
  - the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (4) In Schedule 28A—
- Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and
  - Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.
- (6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.

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- (7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—
- (a) [<sup>F30</sup>expenses of management deductible] or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or
  - (b) charges paid in such an accounting period,
- from an amount of the total profits equal to the amount which represents the relevant gain.
- (8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—
- (a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;
  - (b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.
- [<sup>F31</sup>(9) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the relevant company's loan relationships [<sup>F32</sup>(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)].]
- (11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (12) In this section—
- “the relevant provisions of the 1992 Act” means section 8(1) of and Schedule 7A to that Act; and
- [<sup>F33</sup>“company with investment business” has the same meaning as in Part 4.]
- [ This section applies in relation to an asset to which Schedule 29 to the Finance Act
- <sup>F34</sup>(13) 2002 applies (intangible fixed assets), with the following adaptations—
- (a) for the reference to section 171(1) of the 1992 Act substitute a reference to paragraph 55 of that Schedule;
  - (b) for any reference to a chargeable gain under that Act substitute a reference to a chargeable realisation gain within the meaning of that Schedule that is a credit within paragraph 34(1)(a) of that Schedule (non-trading credits);
  - (c) for any reference to a disposal of the asset substitute a reference to its realisation within the meaning of that Schedule;
  - (d) for the reference to the relevant provisions of the 1992 Act substitute a reference to Part 6 of that Schedule.]]

#### Textual Amendments

**F17** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 2

**F29** Words in s. 768C(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), Sch. 6 para. 4(2)



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- F30** Words in s. 768C(7)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(3)**
- F31** S. 768C(9) substituted for s. 768C(9)(10) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 40** (with Sch. 15)
- F32** Words in s. 768C(9) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 10** (with Sch. 28)
- F33** S. 768C(12): definition substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(4)**
- F34** S. 768C(13) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(2)**

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

- C12** Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**

**[<sup>F35</sup>768D] Change in ownership of company carrying on property business.**

- (1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—
  - (a) in the case of [<sup>F36</sup>a company with investment business], either—
    - (i) paragraph (a), (b) or (c) of section 768B(1) applies, or
    - (ii) section 768C applies;
  - (b) in the case of a company which is not [<sup>F37</sup>a company with investment business], paragraph (a) or (b) of section 768(1) applies.
- (2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.
- (3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (4) The profits or losses of the period in which the change occurs are apportioned to those two periods—
  - (a) in the case of [<sup>F38</sup>a company with investment business]—
    - (i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or
    - (ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and
  - (b) in the case of a company which is not [<sup>F39</sup>a company with investment business], according to the length of the periods,  
unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—
  - (a) in the case of—

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- (i) [<sup>F40</sup>a company with investment business] where paragraph (a), (b) or (c) of section 768B(1) applies, or
  - (ii) a company which is not [<sup>F40</sup>a company with investment business], profits of an accounting period ending after the change of ownership;
  - (b) in the case of [<sup>F40</sup>a company with investment business] where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.
- (7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section—
- (a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;
  - [<sup>F41</sup>(b) “company with investment business” has the same meaning as in Part 4.]
- (9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.]

#### Textual Amendments

- F35** S. 768D inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 31** (with Sch. 5 para. 73)
- F36** Words in s. 768D(1)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(2)(a)**
- F37** Words in s. 768D(1)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(2)(b)**
- F38** Words in s. 768D(4)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(3)(a)**
- F39** Words in s. 768D(4)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(3)(b)**
- F40** Words in s. 768D(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(4)**
- F41** S. 768D(8)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(5)**

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

- C13** Ss. 768, 768D modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 11**; S.I. 2005/1444, art. 2(1), **Sch. 1**
- C14** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.
- C15** Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

#### [<sup>F42</sup>768E Change in ownership of company with unused non-trading loss on intangible fixed assets

- (1) Where there is a change in the ownership of [<sup>F43</sup>a company with investment business] and either—
- (a) paragraph (a), (b) or (c) of section 768B(1) applies, or

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- (b) section 768C applies,  
the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change.
- (2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (3) The profits or losses of the period in which the change occurs are apportioned to those two periods—
- (a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or
- (b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule, unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—
- (a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;
- (b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.
- (6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (7) In this section [<sup>F44</sup>“company with investment business”] has the same meaning as in Part 4.]

#### Textual Amendments

- F42** S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(3)**
- F43** Words in s. 768E(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 6(2)**
- F44** Words in s. 768E(7) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 6(3)**

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

- C16** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.
- C17** Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

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## **769 Rules for ascertaining change in ownership of company.**

<sup>M12</sup>(1) For the purposes of [<sup>F45</sup>sections 767A, [<sup>F46</sup>767AA, 767C,] 768, 768A, 768B [<sup>F47</sup>, 768C and 768D]] there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person [<sup>F48</sup>, and any gift of shares which] is unsolicited and made without regard to the provisions of [<sup>F49</sup>sections 767A, [<sup>F50</sup>767AA,] 768, 768A, 768B [<sup>F47</sup>, 768C and 768D]], <sup>F51</sup>. . . shall be left out of account.

[<sup>F52</sup>(2A) Where—

- (a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and
- (b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,

then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A [<sup>F53</sup>, 767AA or 767C], holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.]

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an

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appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768 [F54, 768A or 768D], holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

[F55](3A) Subsection (3) above shall apply for the purposes of sections 768B and 768C as if the reference to the benefit of losses were a reference to the benefit of deductions.]

(4) Where [F56]section 768, 768A, 768B [F57, 768C or 768D] has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for the purposes of [F58]sections 767A, [F46]767AA, 767C,] 768, 768A, 768B [F47, 768C and 768D] if—

- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
- (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

[F59](6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
- (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
- (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—

“the appropriate proportion”, in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

“relevant assets”, in relation to a company, means—

- (a) any ordinary share capital of another company, and
- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary of another company (“the parent company”) it shall not be treated at

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that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

- (a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).]

(7) For the purposes of this section—

- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
- (b) *a company shall be deemed to be a 75per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies*<sup>F60</sup>;
- (c) *the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 838; and*

<sup>F61</sup>(d) “shares” includes stock.

(8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

[<sup>F62</sup>(9) Subsection (8) above shall not apply in relation to section 767A [<sup>F53</sup>, 767AA or 767C].]

#### Textual Amendments

- F45** Words in s. 769(1) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)
- F46** Word in s. 769(1)(5) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(a)
- F47** Words in s. 769(1)(2)(d)(5) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(a) (with Sch. 5 para. 73)
- F48** Words in s. 769(2)(d) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(a)
- F49** Words in s. 769(2)(d) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)
- F50** Word in s. 769(2)(d) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(b)
- F51** Words in s. 769(2)(d) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(b), Sch. 41 Pt. 5(10), Note

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- F52** S. 769(2A) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), s. 135(4)
- F53** Words in s. 769(2A)(9) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(c)
- F54** Words in s. 769(3) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(b) (with Sch. 5 para. 73)
- F55** S. 769(3A) inserted (with application in accordance with Sch. 26 para. 5 of the amending Act)) by Finance Act 1995 (c. 4), Sch. 26 para. 4(3)
- F56** Words in s. 769(4) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(4)
- F57** Words in s. 769(4) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(c) (with Sch. 5 para. 73)
- F58** Words in s. 769(5) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)
- F59** S. 769(6)-(6C) substituted (*in relation to change of ownership occurring on or after 14March 1989*) by Finance Act 1989 (c. 26, SIF 63:1), s. 100(2).
- F60** Repealed by 1989 ss.100(3), 187and Sch.17 Part IV*where the change of ownership of a company would be treated as occurring on or after 14March 1989.*
- F61** Repealed by 1989 ss.100(3), 187and Sch.17 Part IV*where the change of ownership of a company would be treated as occurring on or after 14March 1989.*
- F62** S. 769(9) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), s. 135(5)

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

- C18** See s.245—*calculation etc. of ACTon change of ownership.*

**Marginal Citations**

- M12** Source—1970 s.484

*Transactions between associated persons*

[<sup>F63</sup>**770A Provision not at arm’s length.**

Schedule 28AA (which deals with provision made or imposed otherwise than at arm’s length) shall have effect.]

**Textual Amendments**

- F63** S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

<sup>F63</sup>**770 Sales etc. at an undervalue or overvalue.**

.....

**Textual Amendments**

- F63** S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

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### **F63 771 Transactions by petroleum companies.**

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#### **Textual Amendments**

**F63** S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

### **F63 772 Information for purposes of section 770, and appeals.**

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#### **Textual Amendments**

**F63** S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

### **F63 773 Interpretation of sections 770 and 771.**

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#### **Textual Amendments**

**F63** S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), s. 108(1); S.I. 1998/3173, art. 2

### **774 Transactions between dealing company and associated company.**

<sup>M13</sup>(1) Subject to the provisions of this section, where—

- (a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or
- (b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;

and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable in respect thereof under Case VI of Schedule D.

- (2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.
- (3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—
  - (a) either—



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- (i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or
  - (ii) the payment to the company was made for meeting such expenditure, and
- (b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,
- subsection (1) above shall not apply in so far as the expenditure proved abortive.
- (4) For the purposes of this section—
- (a) “company” includes any body corporate;
  - (b) “dealing company” means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;
  - (c) “non-dealing company” means any company which is not a dealing company;
  - (d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;
  - (e) references to a company (“the first company”) having control of another company (“the second company”) shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and “control” has the meaning given by section 840;
  - (f) “securities” includes shares and stock.
- (5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability to tax.

#### Marginal Citations

**M13** Source—1970 s.486

VALID FROM 19/07/2006

### *F<sup>64</sup> Factoring of income receipts etc*

#### Textual Amendments

**F64** Ss. 774A-774G and preceding cross-heading inserted (with effect in accordance with Sch. 6 para. 6(2)-(7) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 6(1)

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#### **774A Meaning of “structured finance arrangement” for purposes of s.774B**

- (1) For the purposes of section 774B an arrangement is a structured finance arrangement in relation to a person (“the borrower”) if the following condition is met in relation to the borrower.
- (2) The condition is that—
  - (a) under the arrangement the borrower receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
  - (b) in accordance with generally accepted accounting practice the accounts of the borrower for that period record a financial liability in respect of the advance,
  - (c) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) under the arrangement to or for the benefit of the lender or a person connected with the lender,
  - (d) the lender, or a person connected with the lender, is entitled under the arrangement to payments in respect of the security, and
  - (e) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower.
- (3) For the purposes of this section, in any case where the borrower is a partnership, references to the accounts of the borrower include the accounts of any member of the partnership.
- (4) For the purposes of this section and section 774B—
  - (a) references to a person connected with the borrower do not include the lender, and
  - (b) references to a person connected with the lender do not include the borrower.

#### **774B Disregard of intended effects of arrangement involving disposals of assets**

- (1) If—
  - (a) an arrangement is a structured finance arrangement in relation to a person (“the borrower”), and
  - (b) the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)),
 the arrangement is not to have that effect.
- (2) If the borrower is a person other than a partnership, the relevant effect is that—
  - (a) an amount of income on which the borrower, or a person connected with the borrower, would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower, or of a person connected with the borrower, is not so brought into account, or
  - (c) the borrower, or a person connected with the borrower, becomes entitled to an income deduction.
- (3) If the borrower is a partnership, the relevant effect is that—
  - (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,

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- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
  - (c) a member of the partnership becomes entitled to an income deduction.
- (4) If—
- (a) a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a person within the charge to income tax, and
  - (b) in accordance with generally accepted accounting practice the accounts of the person record an amount as a finance charge in respect of the advance, that person may treat the amount for income tax purposes as interest payable on a loan.
- (5) If a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a company within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as a money debt owed by the company,
  - (b) the arrangement is to be treated, in relation to the company, for the purposes of that Chapter as a loan relationship of the company (as a debtor relationship), and
  - (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the company as a finance charge in respect of the advance is to be treated as interest payable under that relationship.
- (6) For the purposes of this section, in any case where the borrower is a partnership,—
- (a) references to accounts include the accounts of the partnership, and
  - (b) any deemed interest is treated as payable by the partnership (whether or not the finance charge is recorded in the accounts of the partnership).
- (7) For the purpose of determining when any deemed interest in respect of the advance is paid—
- (a) the payments mentioned in section 774A(2)(d) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and
  - (b) the interest elements of those payments are treated as paid when those payments are paid,
- and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.
- (8) In this section “deemed interest” means any amount which is treated as interest as a result of subsection (4) or (5).
- (9) This section is subject to the exceptions contained in section 774E.

#### **774C Meaning of “structured finance arrangement” for purposes of s.774D**

- (1) For the purposes of section 774D an arrangement is a structured finance arrangement in relation to a partnership (“the borrower partnership”) if condition A or B is met in relation to the borrower partnership.

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(2) Condition A is that—

- (a) a person (“the transferor partner”) disposes of an asset (“the security”) under the arrangement to the borrower partnership,
- (b) the transferor partner is a member of the borrower partnership immediately after the disposal (whether or not a member immediately before the disposal),
- (c) under the arrangement the borrower partnership receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
- (d) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,
- (e) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender (see subsection (6)),
- (f) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and
- (g) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(3) For the purposes of condition A, references to the accounts of the borrower partnership include the accounts of the transferor partner.

(4) Condition B is that—

- (a) the borrower partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
- (b) under the arrangement the borrower partnership receives from another person (“the lender”) any money or other asset (“the advance”) in any period,
- (c) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,
- (d) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender,
- (e) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and
- (f) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(5) For the purposes of condition B, references to the accounts of the borrower partnership include the accounts of any person who is a member of the partnership immediately before the arrangement is made.

(6) For the purposes of this section and section 774D there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender if directly or indirectly in consequence of, or otherwise in connection with, the arrangement—

- (a) the lender, or a person connected with the lender, becomes a member of the borrower partnership at any time, or

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(b) there is at any time a change in the share of a member of the borrower partnership in the profits of the borrower partnership in a case where that member is the lender or a person connected with the lender.

(7) For the purposes of subsection (6)(b) the reference to a person connected with the lender includes a person who at any time becomes connected with the lender directly or indirectly in consequence of, or otherwise in connection with, the arrangement.

#### **774D Disregard of intended effects of arrangement involving change in relation to a partnership**

(1) This section applies if—

- (a) an arrangement is a structured finance arrangement in relation to a partnership (“the borrower partnership”), and
- (b) any relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender would (disregarding this section) have had the following effect.

(2) The effect is that—

- (a) an amount of income on which a relevant member of the borrower partnership would otherwise have been charged to tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member of the borrower partnership is not so brought into account, or
- (c) a relevant member of the borrower partnership becomes entitled to an income deduction.

(3) In this section “relevant member of the borrower partnership” means—

- (a) in any case where condition A in section 774C is met in relation to the arrangement, the transferor partner, and
- (b) in any case where condition B in that section is met in relation to the arrangement, any person other than the lender who is a member of the borrower partnership immediately before the time at which the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender occurs.

(4) Part 9 of ITTOIA 2005 and section 114 above are to have effect in relation to any relevant member of the borrower partnership as if the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender had not occurred.

Accordingly, the structured finance arrangement is not to have the effect mentioned in subsection (2).

(5) The following provisions of this section confer relief from tax the availability of which depends on which of the conditions in section 774C is met in relation to the arrangement.

(6) In any case where condition A in section 774C is met, if—

- (a) the transferor partner is a person within the charge to income tax, and
- (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,

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the transferor partner may treat the amount for income tax purposes as interest payable by the transferor partner on a loan.

(7) In any case where condition A in that section is met, if the transferor partner is a company within the charge to corporation tax—

- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by the borrower partnership,
- (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and
- (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the company under that transaction.

(8) For the purposes of subsections (6) and (7), references to the accounts of the borrower partnership include the accounts of the transferor partner.

(9) In any case where condition B in section 774C is met, if—

- (a) a relevant member of the borrower partnership is a person within the charge to income tax, and
- (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,

the relevant partner may treat the amount for income tax purposes as interest payable by the borrower partnership on a loan.

(10) In any case where condition B in that section is met, if a relevant member of the borrower partnership is a company within the charge to corporation tax—

- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by that partnership,
- (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and
- (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the borrower partnership under that transaction.

(11) For the purposes of subsections (9) and (10), references to the accounts of the borrower partnership include the accounts of any relevant member of the borrower partnership.

(12) For the purpose of determining when any deemed interest in respect of the advance is paid—

- (a) the payments mentioned in section 774C(2)(f) or (4)(e) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and
- (b) the interest elements of those payments are treated as paid when those payments are paid,

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and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

- (13) In this section “deemed interest” means any amount which is treated as interest as a result of any of subsections (6) to (10).
- (14) This section is subject to the exceptions contained in section 774E.

#### **774E Sections 774B and 774D: exceptions**

- (1) Section 774B or 774D does not apply if the whole of the advance under the structured finance arrangement—
- (a) is charged to tax on a relevant person (see subsection (7)) as an amount of income,
  - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
  - (c) is brought into account for the purposes of any provision of the Capital Allowances Act as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

For the purposes of this subsection the effect of section 785A (rent factoring of leases of plant or machinery) is to be disregarded.

- (2) Subsection (1)(c) is not to be taken as met in any case where—
- (a) the receipt or proceeds gives rise to a balancing charge, and
  - (b) the amount of the balancing charge is limited by any provision of the Capital Allowances Act.
- (3) Section 774B or 774D does not apply if, at all times, the whole of the advance under the structured finance arrangement—
- (a) is a debtor relationship of a relevant person for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships), or
  - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

For the purposes of this subsection references to a debtor relationship do not include a relationship to which section 100 of the Finance Act 1996 (money debts etc not arising from the lending of money) applies.

- (4) Section 774B or 774D does not apply in so far as the structured finance arrangement is an arrangement in relation to which—
- (a) section 263A of the 1992 Act (agreements for sale and repurchase of securities) applies,
  - (b) paragraph 15 of Schedule 9 to the Finance Act 1996 (repo transactions and stock-lending) applies, or
  - (c) Chapter 5 of Part 2 of the Finance Act 2005 (alternative finance arrangements) has effect.
- (5) Section 774B or 774D does not apply in so far as—
- (a) the security under the structured finance arrangement is plant or machinery which is the subject of a sale and finance leaseback, or
  - (b) the structured finance arrangement is an arrangement in relation to which sections 228B to 228D of the Capital Allowances Act apply with the

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modifications contained in section 228F of that Act (lease and finance leaseback).

- (6) For the purposes of subsection (5)(a), whether plant or machinery is the subject of a sale and finance leaseback is determined in accordance with section 221 of the Capital Allowances Act.

But, in applying that section, it is to be assumed that the words “and which are not a long funding lease in the case of the lessor” were omitted from section 219(1)(b) of that Act (meaning of “finance lease”).

- (7) For the purposes of this section a “relevant person” means—
- (a) if section 774B applies, a person in relation to whom the structured finance arrangement would (but for that section) otherwise have had the relevant effect (within the meaning of that section), and
  - (b) if section 774D applies, a relevant member of the borrower partnership (within the meaning of that section).

#### **774F Sections 774B and 774D: power to provide further exceptions**

- (1) The Treasury may make regulations prescribing other circumstances in which section 774B or 774D is not to apply in relation to a structured finance arrangement.
- (2) Any regulations under subsection (1) may make provision amending section 774E.
- (3) The power to make regulations under subsection (1) includes—
  - (a) power to make provision having effect in relation to times before the making of the regulations (but not times earlier than 6th June 2006),
  - (b) power to make different provision for different cases or different purposes, and
  - (c) power to make incidental, supplemental, consequential or transitional provision and savings.

#### **774G Sections 774A to 774D: minor definitions etc**

- (1) For the purposes of sections 774A to 774D “arrangement” includes any agreement or understanding (whether or not legally enforceable).
- (2) For the purposes of sections 774A to 774D “income deduction” means—
  - (a) a deduction in calculating any income for tax purposes, or
  - (b) a deduction against total income or total profits.
- (3) For the purposes of sections 774A to 774D—
  - (a) references to a person's receiving any asset include the person's obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it,
  - (b) references to a disposal of an asset include anything which constitutes a disposal of the asset for the purposes of the 1992 Act,
  - (c) references to payments in respect of any asset include obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.
- (4) For the purposes of sections 774A to 774D, section 839 (connected persons) applies.



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- (5) For the purposes of sections 774A to 774D references to the accounts of any person who is a company include the consolidated group accounts of a group of companies of which it is a member.
- (6) If any person does not draw up accounts in accordance with generally accepted accounting practice, sections 774A to 774D apply as if the accounts had been drawn up by the person in accordance with that practice.
- (7) Sections 277 to 281 of ITTOIA 2005 and section 34 above (lease premiums) are not to apply in relation to a premium paid in respect of a grant of a lease where the grant constitutes a disposal of an asset for the purposes of section 774A(2)(c) or 774C(2)(a).]

#### *Other provisions*

### **775 Sale by individual of income derived from his personal activities.**

- <sup>M14</sup>(1) Subject to subsection (7) below, this section has effect where—
- (a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual's activities in that occupation, or anything derived directly or indirectly from any such income or receipts; and
  - (b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person; and
  - (c) the main object or one of the main objects of the transactions was the avoidance or reduction of liability to income tax.
- (2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable, and which is chargeable to tax under Case VI of Schedule D.
- (3) In this section—
- (a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual is engaged in a profession or vocation, or is employed by or holds office under some other person; and
  - (b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.
- (4) This section shall not apply to a capital amount obtained from the disposal—
- (a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or
  - (b) of shares in a company,
- in so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern.

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- (5) If the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, subsection (4) above shall not exempt the part of the capital amount so derived.
- (6) In subsections (4) and (5) above references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.
- (7) Where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right, then—
- (a) tax under this section shall not be charged on any such occasion, but
  - (b) without prejudice to the generality of the provisions of this section or section 777, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.
- (8) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.
- (9) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.

#### Marginal Citations

M14 Source—1970 s.487(1)-(7)

VALID FROM 20/07/2005

#### [<sup>F65</sup>775A] Transfers of rights to receive annual payments

- (1) This section applies in any case where—
- (a) a person sells or transfers the right to receive an annual payment to which this section applies (see subsection (4)), and
  - (b) the consideration (if any) for the sale or transfer would not, apart from this section, be chargeable to tax.
- (2) In any such case, tax is charged—
- (a) in the case of income tax, under this section; or
  - (b) in the case of corporation tax, under Case III of Schedule D.
- (3) Where this section applies—

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- (a) the tax is charged on an amount equal to the market value of the right to receive the annual payment;
  - (b) the tax is charged for the chargeable period in which the sale or transfer takes place;
  - (c) the person liable for the tax is the person who sells or transfers the right to the annual payment.
- (4) This section applies to any annual payment other than—
- (a) an annual payment under a life annuity;
  - (b) an annual payment under a pension annuity;
  - (c) an annual payment to which section 347A applies (annual payments that are not charges on income);
  - (d) an annual payment in respect of which, by virtue of section 727 of ITTOIA 2005 (payments by individuals arising in UK), no liability to income tax arises under Part 5 of that Act.
- (5) This section applies in relation to part of an annual payment as it applies in relation to the whole of an annual payment.
- (6) For the purposes of this section, a sale or transfer of all rights under an agreement for annual payments, or under an annuity, is a sale or transfer of the rights to each individual payment under the agreement or annuity.
- (7) In this section—
- “life annuity” means—
    - (a) a life annuity, as defined in section 657(1); or
    - (b) a life annuity, as defined in section 473(2) of ITTOIA 2005;
  - “pension annuity” means an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).]

#### Textual Amendments

**F65** S. 775A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 4(1)

#### 776 Transactions in land: taxation of capital gains.

<sup>M15</sup>(1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.

(2) This section applies wherever—

- (a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land; or
- (b) land is held as trading stock; or
- (c) land is developed with the sole or main object of realising a gain from disposing of the land when developed;

and any gain of a capital nature is obtained from the disposal of the land—

- (i) by the person acquiring, holding or developing the land, or by any connected person, or

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- (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;
- and this subsection applies whether any such person obtains the gain for himself or for any other person.
- (3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—
- (a) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised; and
  - (b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.
- (4) For the purposes of this section—
- (a) land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of; and
  - (b) references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.
- (5) For those purposes—
- (a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person; and
  - (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.
- (6) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of; and in applying this subsection—
- (a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the [<sup>F66</sup>profits] under Case I of Schedule D of a person dealing in land are computed in such a case; or
  - (b) account may be taken of the adjustments to be made in computing such [<sup>F66</sup>profits] under subsections (2) and (3) of section 99.
- In the application of this subsection to Scotland, “freehold” means the estate or interest of the proprietor of the *dominium utile* or, in the case of property other than feudal property, of the owner, and “reversion” means the interest of the landlord in property subject to a lease.
- (7) Subsection (2)(c) above shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or (b) of that subsection; and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.

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- (8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.
- (9) This section shall not apply to a gain accruing to an individual which by virtue of sections [F67222 to 226 of the 1992] Act (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of section [F67224(3)] of that Act (residences acquired partly with a view to making a gain).
- (10) Where—
- (a) there is a disposal of shares in—
    - (i) a company which holds land as trading stock; or
    - (ii) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock; and
  - (b) all the land so held is disposed of—
    - (i) in the normal course of its trade by the company which held it, and
    - (ii) so as to procure that all opportunity of profit in respect of the land arises to that company,
- then this section shall not by virtue of subsection (2)(i) above apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under subsection (2)(ii) above).
- (11) Where a person who considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—
- (a) the inspector shall, within 30 days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section; and
  - (b) if the inspector notifies that person that he is so satisfied, the gain shall not be chargeable on that person under this section.
- (12) If the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under subsection (11) above shall be void.
- (13) In this section—
- (a) references to the land include references to all or any part of the land, and “land” includes buildings, and any estate or interest in land or buildings;
  - (b) references to property deriving its value from land include—
    - (i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and
    - (ii) any option, consent or embargo affecting the disposition of land;

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and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 839.

- (14) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

#### Textual Amendments

- F66** Words in s. 776(6)(a)(b) substituted (31.7.1998) by Finance Act 1998 (c. 6), s. 46(3)(a), Sch. 7 para. 1
- F67** Words in s. 776(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 14(50) (with ss. 60, 101(1), 171, 201(3))

#### Marginal Citations

- M15** Source—1970 s.488; 1979(C) Sch.7

### 777 Provisions supplementary to sections 775 and 776.

- <sup>M16</sup>(1) This section has effect to supplement sections 775 and 776, and those sections and this section are together referred to as the relevant provisions.
- (2) In applying the relevant provisions account shall be taken of any method, however indirect, by which—
- (a) any property or right is transferred or transmitted; or
  - (b) the value of any property or right is enhanced or diminished;
- and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under sections 775 and 776, tax becomes chargeable.
- (3) Subsection (2) above applies in particular—
- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration; and
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property; and
  - (c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo; and
  - (d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.
- (4) In ascertaining for the purposes of the relevant provisions the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.
- (5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.
- (6) In applying the relevant provisions—

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- (a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances;
  - (b) all such valuations shall be made as are appropriate to give effect to sections 775 and 776.
- (7) For the purposes of the relevant provisions (and in particular for the purpose of the reference in section 775 to an individual putting some other person in a position to enjoy income or receipts) partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives.
- (8) Where a person is assessed to tax under the relevant provisions in respect of consideration receivable by another person—
- (a) he shall be entitled to recover from that other person any part of that tax which he has paid; and
  - (b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed;
- and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated in it.
- For the purposes of this subsection any income which a person is treated as having by virtue of sections 775 and 776 shall, subject to section 833(3), be treated as the highest part of his income.
- (9) If it appears to the Board that any person entitled to any consideration or other amount taxable under sections 775 and 776 is not resident in the United Kingdom, the Board may direct that section 349(1) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.
- (10) Sections 775 and 776 have effect subject to Part XV and to any other provision of the Tax Acts deeming income to belong to a particular person.
- (11) Where under section 776(2)(c) any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of section [F<sup>68</sup>161 of the 1992] Act (property becoming or ceasing to be stock in trade).
- (12) Where under section 775(1)(b) or 776(8) the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of sections [F<sup>68</sup>37 and 39 of the 1992] Act (profits taxable as income excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.
- (13) For the purposes of the relevant provisions—
- “capital amount” means any amount, in money or money’s worth, which, apart from the sections 775 and 776, does not fall to be included in any

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computation of income for purposes of the Tax Acts, and other expressions including the word “capital” shall be construed accordingly;

“company” includes any body corporate; and

“share” includes stock;

and any amount in money or money’s worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

#### **Textual Amendments**

**F68** Words in s. 777(11)(12) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(51)** (with ss. 60, 101(1), 171, 201(3))

#### **Marginal Citations**

**M16** Source—1970 s.489; 1979(C) Sch.7

### **778 Power to obtain information.**

<sup>M17</sup>(1) The Board or an inspector may by notice require any person to furnish them within such time as the Board or the inspector may direct (not being less than 30 days) with such particulars as the Board or the inspector think necessary for the purposes of sections 775 and 776.

(2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—

- (a) as to transactions or arrangements with respect to which he is or was acting on behalf of others;
- (b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of sections 775 and 776 notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections; and
- (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.

(3) Notwithstanding anything in subsection (2) above, a solicitor—

- (a) shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in any transaction or arrangement by reason only that he has given professional advice to a client in connection with the transaction or arrangement, and
- (b) shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

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

**C19** See S.I.1989 No.1343 (N.I.14) Sch.1 para.38(3) for construction in the case of a solicitor who is an officer or employee of a recognised body.



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### Marginal Citations

M17 Source—1970 s.490

## 779 Sale and leaseback: limitation on tax reliefs.

<sup>M18</sup>(1) If land or any estate or interest in land is transferred from one person to another and—

- (a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or
- (b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,

the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.

(2) If—

- (a) land or any estate or interest in land is transferred from one person to another, and
- (b) as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which any relevant tax relief is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land,

then this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) above to the transfer of an estate or interest in land include references to—

- (a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land;
- (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease; and
- (c) any transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners;

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of any relevant tax relief, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If—

- (a) under subsection (4) above part of a payment which would otherwise be allowable as a deduction by way of any relevant tax relief is not so allowable, and

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- (b) one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction, that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (6) For the purposes of subsection (4) above—
- (a) if more than one payment is made for the same period the payments shall be taken together;
  - (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
  - (c) the preceding references to payments include references to parts of payments which under subsection (5) above are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under that subsection is not so allowable as a deduction by way of tax relief, it may again be carried forward under that subsection;
  - (d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.
- (7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (8) For the purposes of making a comparison under subsection (4) above between a payment consisting of rent under a lease (“the actual lease”), or such payments taken together, and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—
- (a) at a uniform rate, or
  - (b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease.
- (9) For the purpose of making a comparison under subsection (4) above between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a tenant’s repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—

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- (a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years; and
  - (b) where that period is less than 200 years, a lease which is of the same duration as that period.
- (10) In this section references to rent under a lease include references to rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 or under section 87 treated, for any purpose, as paying in respect of land comprised in the lease, and such rent shall be treated for the purposes of this section as having been paid from day to day as it has become due.
- (11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—
- (a) the transferor in any such transaction as is described in subsection (1) or (2) above, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors;
  - (b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;
  - (c) any persons who are associates as defined in section 783(10).
- (12) In this section—
- “asset” means any description of property or rights other than land or an interest in land;
- “lease” includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly;
- “rent” includes any payment made under a lease; and
- “tenant’s repairing lease” means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.
- (13) For the purposes of this section the following are deductions by way of relevant tax relief, that is to say—
- (a) a deduction in computing profits or gains chargeable under Schedule A <sup>F69</sup> . . . ;
  - (b) a deduction in computing [<sup>F70</sup> profits] or losses of a trade, profession or vocation for the purposes of tax;
  - (c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;
  - (d) [<sup>F71</sup> a deduction] under section 75 or 76;
  - (e) [<sup>F72</sup> a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses)] or allowable in computing losses in an employment for tax purposes;
  - (f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

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- (14) This section shall not apply if the transfer described in subsection (1) or (2) above was on or before 14th April 1964.

#### Textual Amendments

- F69** Words in s. 779(13)(a) repealed (with effect in accordance with s. 39(4)(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 6 para. 27, Sch. 29 Pt. 8(1), Note
- F70** Words in s. 779(13)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1
- F71** Words in s. 779(13)(d) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 32(2)
- F72** Words in s. 779(13)(e) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 101 (with Sch. 7)

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

- C20** S. 779 restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 23
- C21** S. 779 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), Sch. 7 para. 22 (with s. 43(6))
- C22** S. 779 excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), Sch. 33 para. 13(1); S.I. 1999/3434, art. 2
- C23** S. 779(1)(2) excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 24(8) (with s. 40(7)); S.I. 1994/2189, art. 2, Sch.
- C24** S. 779(1)(2) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 10

#### Marginal Citations

- M18** Source—1970 s.491

### 780 Sale and leaseback: taxation of consideration received.

<sup>M19</sup>(1) If, in any case where a person (“the lessee”) who is a lessee of land under a lease having not more than 50 years to run (“the original lease”) is entitled in respect of the rent under the lease to a deduction by way of tax relief which is a relevant tax relief for the purposes of section 779—

- (a) the lessee assigns the original lease to another person, or surrenders it to his landlord, for a consideration which apart from this section would not be taxable otherwise than as capital in the hands of the lessee, and
- (b) there is granted or assigned to the lessee another lease (“the new lease”) of or including the whole or any part of the land which was the subject of the original lease for a term not exceeding 15 years;

then, subject to the following provisions of this section, the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply in relation to the rent under the new lease, and for the purposes of the Tax Acts a proportion of the consideration received by the lessee shall be treated not as a capital receipt but in accordance with subsection (3) below.

(2) For the purposes of this section—

- (a) if the aggregate of the rent payable under the new lease in respect of any rental period ending on a date falling before the 15th anniversary of the date on which the term of the new lease begins is greater than the aggregate of the rent payable under the new lease in respect of the period of equal duration beginning on the day following that date, then unless the term of the new lease

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would be treated as ending on an earlier date by virtue of paragraph (b) below, that term shall be treated as ending on that date;

- (b) if under the terms of the new lease—
- (i) the lessor of the lessee has power to determine the new lease at a time before the expiry of the term for which it was granted, or
  - (ii) the lessee has power to vary his obligations under the new lease so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him,

then, unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (a) above, that term shall be treated as ending on the earliest date with effect from which, in exercise of that power, the lessor or the lessee could determine the new lease or, as the case may be, the lessee could so vary his obligations;

and in any case where a rentcharge payable by the lessee is secured on the whole or any part of the property which is the subject of the new lease, the rent payable under the new lease shall be treated for the purposes of paragraphs (a) and (b) above as equal to the aggregate of the rentcharge and the rent payable under the terms of that lease.

- (3) Subject to the following provisions of this section, the proportion of the consideration received by the lessee as mentioned in subsection (1) above, or of any instalment of that consideration, which for the purposes of the Tax Acts is to be treated not as a capital receipt but in accordance with this subsection shall be determined by the formula—

$$\frac{16 - N}{15}$$

where N is the term of the new lease expressed in years or, if that term is less than a year, where N is 1; and that proportion shall be treated for the purposes of the Tax Acts—

- (a) as a receipt of a trade, profession or vocation, if the rent payable by the lessee under the new lease is allowable as a deduction in computing [<sup>F73</sup>profits] or losses of a trade, profession or vocation for the purposes of tax and if the consideration is received by the lessee in the course of that trade, profession or vocation; and
  - (b) in any other case, as a profit or gain chargeable under Case VI of Schedule D.
- (4) In any case where the property which is the subject of the new lease does not include the whole of the property which was the subject of the original lease, the consideration received by the lessee shall be treated for the purposes of subsection (3) above as reduced to that portion of the consideration which is reasonably attributable to such part of the property which was the subject of the original lease as consists of, or is included in, the property which is the subject of the new lease.
- (5) *Schedule 2 shall have effect for the purposes of giving relief, on a claim being made in that behalf, from any increase in an individual's liability to income tax which is attributable to any amount being treated, by virtue of subsection (3) above, as an income receipt for a single year of assessment rather than as a series of such receipts during the term of the new lease; and in the application of that Schedule by virtue of this subsection for the definitions of "chargeable sum" and "relevant period" there shall be substituted the following definitions—*

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*“ “chargeable sum” means the amount in respect of which, by virtue of subsection (3) above, the claimant is chargeable to income tax for the year of assessment;”*

*“ “relevant period”, in relation to any chargeable sum, means the term of the new lease.”*

- (6) Where by agreement with his landlord, the lessee varies the terms of the original lease in such a manner that, in return for such a consideration as is specified in subsection (1) (a) above, the lessee undertakes to pay, during a period ending not later than 15 years after the date on which the consideration, or if the consideration is paid in instalments, the last such instalment, is paid to the lessee, a rent greater than that payable under the original lease, he shall be treated for the purposes of this section—
- (a) as having surrendered the original lease for that consideration, and
  - (b) as having been granted a new lease for a term not exceeding 15 years but otherwise on the terms of the original lease as so varied.
- (7) References in this section to the lessee (other than in subsection (1)(a) above) include references to a person who is a partner or associate of the lessee or an associate of a partner of the lessee; and for the purposes of this section the expression “associate” shall be construed in accordance with 783(10).
- (8) Subject to subsection (7) above, expressions used in this section have the meanings assigned to them by section 24, and in subsection (2)(a) above “rental period” means a period in respect of which a payment of rent falls to be made, and for the purposes of that subsection, in a case where the rental period is a quarter or a month, each such period shall be treated as of equal duration.
- (9) The preceding provisions of this section shall not apply if the lessee had, before 22nd June 1971, a right enforceable at law or in equity to the grant of the new lease, but in any case where, apart from this subsection, those provisions would apply, no part of the rent paid under the new lease shall be treated as a payment of capital, and the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply accordingly.

#### Textual Amendments

**F73** Words in s. 780(3)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

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

**C25** S. 780 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 23** (with s. 43)

#### Marginal Citations

**M19** Source—1972 s.80

## 781 Assets leased to traders and others.

<sup>M20</sup>(1) Subject to section 782, where—

- (a) a deduction by way of tax relief which is one of the kinds listed in subsection (4) below is allowable in respect of a payment made under a lease of an asset of any description, and
- (b) before, at or after the time when the payment is made, either—

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- (i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee's interest in the lease, or
  - (ii) the lessor's interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,

the person obtaining that sum shall be charged under Case VI of Schedule D for the chargeable period in which the sum is obtained with tax on an amount equal to the amount of the payment in respect of which tax relief is so allowed.
- (2) A person shall not be assessed to tax under subsection (1) above on any amount to the extent to which it exceeds the capital sum by reference to which he is so assessed.
- (3) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.
- (4) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—
  - (a) a deduction in computing [<sup>F74</sup>profits] or losses of a trade, profession or vocation for the purposes of tax;
  - (b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;
  - (c) [<sup>F75</sup>a deduction] under section 75 or 76;
  - (d) [<sup>F76</sup>a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses)] or allowable in computing losses in an employment for tax purposes;
  - (e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (5) Where—
  - (a) the deduction by way of tax relief mentioned in subsection (1)(a) above is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and
  - (b) any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the [<sup>F74</sup>profits] of which income tax falls to be computed in respect of the trade, profession or vocation,

for the reference in subsection (2) above to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.
- (6) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) above, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) above to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.

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(8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time [<sup>F77</sup> within the period specified in subsection (8A) below].

[<sup>F78</sup>(8A) The period mentioned in subsection (8) above is—

- (a) in the case of adjustments with respect to income tax, the period ending with the fifth anniversary of the 31st January next following the year of assessment in which the payment was made;
- (b) in the case of adjustments with respect to corporation tax, the period of six years beginning at the end of the accounting period in which the payment was made.]

(9) This section shall not apply if the capital sum obtained in respect of the lessee's interest in a lease constituting a hire-purchase agreement for machinery or plant is a sum which is required to be brought into account as the whole or part of the disposal value of the machinery or plant under [<sup>F79</sup>section 68 of the Capital Allowances Act].

#### Textual Amendments

- F74** Words in s. 781(4)(a)(5)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**
- F75** Words in s. 781(4)(c) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 33(2)
- F76** Words in s. 781(4)(d) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 102** (with Sch. 7)
- F77** Words in s. 781(8) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 21(2)**
- F78** S. 781(8A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 21(3)**
- F79** Words in s. 781(9) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 57**

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

- C26** S. 781 modified (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)-(4)**
- C27** S. 781 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(6)**
- C28** S. 781 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(1)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**
- C29** S. 781 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(1)**
- C30** S. 781 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(1)** (with s. 43)
- C31** S. 781 excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), **Sch. 33 para. 13(2)**; S.I. 1999/3434, art. 2
- C32** See 1979(C) s.106 and Sch.3 para.9—amounts charged under s.781 to be excluded in computing capital gains.

#### Marginal Citations

- M20** Source—1970 s.492 (1)-(5), (7)-(9); 1971 Sch.8 16(7)



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## **782 Leased assets: special cases.**

- <sup>M21</sup>(1) This section shall apply, and section 781 shall not apply, to payments—
- (a) which are allowable by way of deductions in computing the [<sup>F80</sup>profits] or losses of a trade, and
  - (b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—
    - (i) of that trade; or
    - (ii) of another trade carried on by the person who at that time or later was carrying on the first-mentioned trade;and when so used was owned by the person carrying on the trade in which it was being used.
- (2) Subject to the following provisions of this section, the deduction allowable in computing the [<sup>F80</sup>profits] or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.
- (3) If under subsection (2) above part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the [<sup>F80</sup>profits] or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (4) For the purposes of subsection (2) above—
- (a) if more than one payment is made for the same period the payments shall be taken together;
  - (b) if the payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
  - (c) the preceding references to payments include references to parts of payments which under subsection (3) above are treated as if made at a time subsequent to that at which they were made;
- and to the extent that a part of a payment carried forward under subsection (3) above is not allowable as a deduction it may again be carried forward under that subsection.
- (5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (6) For the purpose of making a comparison under subsection (2) above between a payment, or payments taken together, and the commercial rent of the asset, “commercial rent” shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease; and in this subsection—

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“anticipated normal working life” means, in the case of any asset, the period which might be expected, when the asset is first put into use, to be going to elapse before it is finally put out of use as being unfit for further use, it being assumed that the asset is going to be used in the normal manner and to the normal extent, and is going to be so used throughout that period; and

“the relevant time” means the time when the lease was created under which the payment was made with which the commercial rent is to be compared.

- (7) If the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as defined in subsection (6) above shall be determined by reference to what would be paid for such a partial use of the asset.
- (8) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.
- (9) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of section 113 or 337(1) the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.
- (10) In this section references to a trade include references to a profession or vocation.

#### Textual Amendments

**F80** Words in s. 782(1)(a)(2)(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

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

**C33** S. 782 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(5)**

**C34** S. 782 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(2)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

**C35** S. 782 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(2)**

**C36** S. 782 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(2)** (with s. 43)

**C37** S. 782 excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), **Sch. 33 para. 13(1)**; S.I. 1999/3434, art. 2

#### Marginal Citations

**M21** Source—1970 s.493; 1971 Sch.8 16(8)

### 783 Leased assets: supplemental.

<sup>M22</sup>(1) References in section 781 to a sum obtained in respect of the lessee’s interest in a lease of an asset, or in respect of any other interest in an asset include—

- (a) in the case of a lessee’s interest, references to sums representing the consideration in money or money’s worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease; and
- (b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.

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- (2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.
- (3) References in section 781 to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including a transaction of the kind described in subsection (1) or (2) above) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.
- (4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of section 781 as having obtained in respect of the interest—
  - (a) the value of the interest in the open market; or
  - (b) the value of the interest to the person to whom it is, in effect, transferred;whichever is the greater.
- (5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.
- (6) For the purposes of sections 781 and 784 and this section any sum obtained by any persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.
- (7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.
- (8) For those purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.
- (9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of tax of all those persons—
  - (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners unless all those persons agree that it shall be determined by the Special Commissioners;
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct unless all those persons agree that it shall be determined by the Special Commissioners; and
  - (c) in any other case, by the Special Commissioners;

and any such Commissioners shall determine the question in like manner as if it were an appeal, except that all those persons shall be entitled to appear and be heard by

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the Commissioners who are to make the determination or to make representations to them in writing.

(10) For the purposes of this section and in construing the expressions “associate” and “associated” in section 781 and this section, the following persons shall be deemed to be associated with each other, that is to say—

- (a) any individual and that individual’s husband or wife, and any relative, or husband or wife of a relative, of that individual or that individual’s husband or wife (“relative” meaning, for this purpose, brother, sister, ancestor or lineal descendant);
- (b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual (“settlement” and “settlor” having, for this purpose, the meanings given by <sup>F81</sup>section 660G(1) and (2));
- (c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;
- (d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;
- (e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.

(11) In subsection (10) above “body of persons” includes a partnership and “control” has the meaning given by section 840.

#### Textual Amendments

**F81** Words in s. 783(10)(b) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 19**

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

**C38** S. 783(2) restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(2)**

**C39** S. 783(4) excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)(a)(3)**

**C40** See—s.756—s.783(11)applied for purposes of Part XVII Ch.IV (controlled foreign companies),s.798(10)—s.783(11)applied for purposes of s.798 (interest on certain overseas loans).

#### Marginal Citations

**M22** Source—1970 s.494

## 784 Leased assets subject to hire-purchase agreements.

- (1) <sup>M23</sup>In the application of section 781 to a lease which constitutes a hire-purchase agreement, for the reference in subsection (2) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee’s interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (5) of that section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee’s interest.
- (2) In subsection (1) above “capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee’s interest” means—
  - (a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal

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- representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (4) of section 781, plus
- (b) where the lessee’s interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under section 781(1) in respect of the capital sum.
- (4) If the capital sum represents the consideration for part only of the lessee’s interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.
- (5) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee’s interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (3) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (6) <sup>M24</sup>In this section—
- “hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—
- (a) goods are bailed or, in Scotland, hired in return for periodical payments by the person to whom they are bailed or hired, and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
- (i) the exercise of an option to purchase by that person;
- (ii) the doing of any other specified act by any party to the agreement;
- (iii) the happening of any other specified event; and

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

#### Marginal Citations

**M23** Source—1970 s.495

**M24** Source—Consumer Credit Act 1974 Sch.4 29

### 785 Meaning of “asset”, “capital sum” and “lease” for purposes of sections 781 to 784.

In sections 781 to 784—

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“asset” means any description of property or rights other than land or an interest in land;

“capital sum” means any sum of money, or any money’s worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the [<sup>F82</sup>profits] or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable under Case VI of Schedule D; and

“lease”, in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.

#### Textual Amendments

**F82** Words in s. 785 substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1

VALID FROM 19/07/2006

#### [<sup>F83</sup>785Z] ~~Restrictions on use of losses: leasing partnerships~~

- (1) This section applies for corporation tax purposes if—
  - (a) a company carries on a business in respect of which the company is within the charge to corporation tax,
  - (b) the company carries on the business in partnership with other persons in an accounting period of the partnership,
  - (c) the business (“the leasing business”) is, on any day in that period, a business of leasing plant or machinery,
  - (d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and
  - (e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).
- (2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.
- (3) The condition is met if, for the purposes of section 114(2),—
  - (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and
  - (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.
- (4) For the purposes of this condition “profits” does not include chargeable gains.
- (5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances (“the restricted part of the loss”).

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- (6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.
- (7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.
- (8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.
- (9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.]

### Textual Amendments

**F83** Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), s. 83(2)

VALID FROM 19/07/2006

### [<sup>F83</sup>785ZB] Section 785ZA: definitions

- (1) This section applies for the purposes of section 785ZA.
- (2) “Business of leasing plant or machinery” has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).
- (3) “Lease” has the same meaning as in section 785A.
- (4) “Notional business”, in relation to a company, means the business—
  - (a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and
  - (b) which is treated under that provision as carried on alone by the company for those purposes.
- (5) “Plant or machinery” has the same meaning as in Part 2 of the Capital Allowances Act.
- (6) “Relevant capital allowance” means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.
- (7) “Relevant leasing income” means any income of the company's notional business deriving from any lease—
  - (a) which is a lease of plant or machinery, and
  - (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.
- (8) “Relevant loss relief provision” means any of the following provisions—
  - (a) section 392A (Schedule A losses),

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- (b) section 392B (losses from overseas property businesses),
- (c) section 393 (trade losses),
- (d) section 396 (Case VI losses).]

#### Textual Amendments

**F83** Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), s. 83(2)

### [<sup>F84</sup>785A Rent factoring of leases of plant or machinery

- (1) This section applies in any case where the following conditions are satisfied—
  - (a) a person (call him “P”) is entitled to receive rentals under a lease of plant or machinery,
  - (b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,
  - (c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,
  - (d) apart from this section, some or all of the amount or value of the consideration for the transfer (“the relevant portion of the consideration”) would fall to be brought into account neither—
    - (i) as income, nor
    - (ii) as a capital allowances disposal receipt, for the purpose of calculating P’s tax liability.
- (2) In any such case, the relevant portion of the consideration—
  - (a) shall be treated for tax purposes as income of P,
  - (b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and
  - (c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.
- (3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P’s tax liability.
- (4) Where P is a partnership, any reference in this section to calculating P’s tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.
- (5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.
- (6) In this section—
 

“capital allowances disposal receipt” means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);

“lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things;



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“tax liability” means liability to income tax or corporation tax.]

#### Textual Amendments

**F84** S. 785A inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 2004 (c. 12), s. 135(1)

VALID FROM 21/07/2008

#### [<sup>F85</sup>785B Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
  - (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or
  - (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.
- (2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.
- (3) The income is treated—
  - (a) if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and
  - (b) if subsection (1)(b) applies, as income for the period of account in which the payment is made.]

#### Textual Amendments

**F85** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

#### [<sup>F85</sup>785C Section 785B: interpretation

- (1) The expressions used in section 785B and this section are to be interpreted as follows.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
  - (a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or
  - (b) would fall to be included in such a calculation but for section 502B (rental earnings under long funding finance lease).
- (3) “Lease” includes—
  - (a) a licence, and
  - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,and “lessor” and “lessee” are to be read accordingly.

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- (4) “Lease of plant or machinery” includes a lease of plant or machinery and other property but does not include—
- (a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Schedule A, or
  - (b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of the Capital Allowances Act) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.
- (5) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, “lessor” and lessee” include prospective and former lessors and lessees).
- (6) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to subsection (9)).
- (7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—
- (a) the grant, assignment, novation or termination of the lease, or
  - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).
- (8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).
- (9) A capital payment is not “relevant” if or to the extent that—
- (a) the capital payment reduces (or would but for section 536 of the Capital Allowances Act reduce) the amount of expenditure incurred by the lessor for the purposes of the Capital Allowances Act in respect of the plant or machinery in question,
  - (b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, or
  - (c) the capital payment would fall (or falls) to be brought into account by the lessor as a disposal receipt within the meaning of Part 2 of the Capital Allowances Act (see section 60(1) of that Act).
- (10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—
- (a) references to the making of a payment include the passing of value (by any other means), and
  - (b) references to the amount of the payment include the value passed.]

#### Textual Amendments

**F85** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

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VALID FROM 21/07/2008

### **[<sup>F85</sup>785D] Section 785B: lease of plant and machinery and other property**

- (1) This section applies if section 785B applies in relation to a lease of plant or machinery and other property (see section 785C(4)).
- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
  - (a) the plant and machinery, and
  - (b) the other property.
- (3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Schedule A, treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).
- (4) Section 785B(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).]

#### **Textual Amendments**

**F85** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

### **[<sup>F85</sup>785E] Section 785B: expectation that relevant capital payment will not be paid**

- (1) This section applies for corporation tax purposes if—
  - (a) section 785B applies by virtue of subsection (1)(a) of that section, and
  - (b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).
- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.
- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1).]

#### **Textual Amendments**

**F85** Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), Sch. 20 para. 1(1) (with transitional modifications in Sch. 20 para. 1(3))

*Status: Point in time view as at 28/09/2004. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Income and Corporation Taxes Act 1988, CHAPTER VI is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 786 Transactions associated with loans or credit.

- <sup>M25</sup>(1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.
- (2) Subsection (1) above has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.
- (3) If the transaction provides for the payment of any annuity or other annual payment, not being interest, being a payment chargeable to tax under Case III of Schedule D, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.
- (4) <sup>F86</sup> .....
- (5) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, he shall be chargeable to tax under Case VI of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or foregone.
- (6) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the purposes of subsection (5) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect foregone by obtaining the credit.
- (7) The amount of any income payable subject to deduction of income tax shall be taken for the purposes of subsection (5) above as the amount before deduction of tax.
- (8) References in this section to connected persons shall be construed in accordance with section 839.

### Textual Amendments

**F86** S. 786(4) repealed (with effect in accordance with s. 159(1) of the repealing Act) by [Finance Act 1996](#) (c. 8), s. 159(1), [Sch. 41 Pt. 5\(21\)](#), Note 1; S.I. 1996/2646, [art. 2](#)

### Marginal Citations

**M25** Source—1970 s.496

## 787 Restriction of relief for payments of interest.

- <sup>M26</sup>(1) Relief shall not be given to any person under any provision of the Tax Acts in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.

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*Changes to legislation: Income and Corporation Taxes Act 1988, CHAPTER VI is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F87</sup>(1A) This section has effect in relation to Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) but taking the reference in subsection (1) above to giving relief to any person in respect of any payment of interest as including a reference to the bringing into account by any person in accordance with that Chapter of any debit in respect of interest (whether a payment or not); and other references in this section to relief shall be construed accordingly.]

(2) In this section “relief” means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

[<sup>F88</sup>(3) Where the relief is claimed by virtue of section 403—

- (a) in respect of a deficit to which section 83 of the Finance Act 1996 applies (non-trading deficit on loan relationships), or
- (b) in respect of trading losses, in a case where in computing those losses debits in respect of loan relationships are treated under section 82(2)(b) of that Act as expenses of the trade which are deductible in computing the profits of the trade,

any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.]

#### Textual Amendments

**F87** S. 787(1A) inserted (with effect in accordance with s. 82(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 25 para. 53\(2\)](#)

**F88** S. 787(3) substituted (with effect in accordance with s. 82(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 25 para. 53\(3\)](#)

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

**C41** S. 787 extended (with effect in accordance with s. 56 of the affecting Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 2 para. 8](#)

#### Marginal Citations

**M26** Source—1976 s.38

**Status:**

Point in time view as at 28/09/2004. This version of this chapter contains provisions that are not valid for this point in time.

**Changes to legislation:**

Income and Corporation Taxes Act 1988, CHAPTER VI is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.